

***United States Court of Appeals
for the Second Circuit***



APPENDIX

669
NO. 77-4151

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

**NORTHSHORE FABRICATORS AND
ERECTORS, INC.,**

Respondent.

**ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

APPENDIX

ELLIOTT MOORE,

**Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570.**

PAGINATION AS IN ORIGINAL COPY

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In the Matter of: Northshore Fabricators and Erectors, Inc.

Case No.: 29-CA-5396 &
29-RC-3182

9.26.75	Petition filed in 29-RC-3182
2. 4.76	Hearing Opened
2. 5.76	Hearing Closed
6.15.76	Decision and Direction of Election, dated
undated	Local 455's letter to the Board Requesting that the Notice of Election be issued on or before June 30, 1976
6.24.76	Local 819's Request for Stay of Election, dated
6.25.76	Local 455's letter Requesting Review of the Decision and Direction of Election of the Regional Director, dated
6.25.76	Employer's Request for Stay of Election, received
6.30.76	Board's Telegram Denying Request by Employer and Petitioner to Stay Election, dated
6.30.76	Notice of Election to be held
6.30.76	Tally of Ballots issued
6.30.76	Certification on Conduct of Election, dated
7. 1.76	Local 819's Objections to the Conduct of the Election, dated
7. 6.76	Employer's Objections to Election, dated
7. 6.76	Local 455's Letter stating their position, dated
8.19.76	Board's Telegram denying Local 455's Review of Regional Director's Decision and Direction of Election, dated
9. 1.76	Regional Director's Supplemental Decision on Objections and Challenged Ballots, dated
9.20.76	Local 819's Exceptions to Regional Director's Supplementary Decision on Objections and Challenged Ballots, (with attachment), received
11.17.76	Board's Telegram denying Union's Request for Review of Regional Director's Supplemental Decision on Objections and Challenged Ballots, dated
11.23.76	Revised Tally of Ballots issued

IV

11.23.76 Second Revised Tally of Ballots issued

12. 7.76 Certification of Representative, dated

29-CA-5396

1. 4.77 Charge filed

1.25.77 Complaint and Notice of Hearing, dated

2. 4.77 Respondent's Answer, received

2.16.77 Respondent's letter of position, dated

2.17.77 General Counsel's Motion for Summary Judgment, dated

3. 7.77 Board's Order Transferring Proceeding to the Board and Notice
to Show Cause, dated

3.14.77 Respondent's Cross-Motion for Summary Judgment, dated

6.21.77 Decision and Order issued by the National Labor Relations
Board, dated

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

NORTH SHORE FABRICATORS
AND ERECTORS, INC.,

^{1/}
Employer

and

CASE NO. 29-RC-3182

LOCAL 819, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Paulette T. Slavinskas, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. ^{2/}

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved claim to represent certain employees of the Employer. ^{3/}

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is engaged in the shop fabrication and job site erection of steel and ornamental metal products, with its shop located in Ronkonkoma, New York. The Petitioner seeks to represent a unit of production

^{1/} The names of the parties appear as stated at the hearing.

^{2/} As noted below, the Hearing Officer foreclosed testimony concerning a multi-employer unit, this ruling comported with Board precedent and is affirmed.

^{3/} Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, intervened on the basis of a contractual interest.

and maintenance employees, excluding erectors, at the Employer's ironworking shop. The Intervenor contends that the Employer is a member of a multi-employer unit represented by the Independent Association of Steel Fabricators, Inc., with which the Intervenor maintains a collective-bargaining relationship as the exclusive bargaining representative of the employer's ironworking employees.

The Employer contends that it is not a member of the multi-employer unit but otherwise takes no position concerning the competing unions. The parties stipulated that the erectors, employees of the Employer who are represented by a labor organization which is not a party to this proceeding, are properly excluded from the unit sought by the Petitioner.

At the hearing, the Intervenor made an offer of proof concerning the appropriateness of the asserted multi-employer unit. The Hearing Officer rejected this offer.

In Case No. 29-CA-4619, the Intervenor filed an unfair labor practice charge alleging, inter alia, that the Employer had violated Section 8(a)(5) and (1) of the Act, by refusing to bargain with the Intervenor in the multi-employer unit. The Regional Director refused to issue a Complaint in Case No. 29-CA-4619 by letter of December 23, 1975, finding in material past;

...[The Intervenor] was party to a collective bargaining agreement with the Employer covering the Employer's production and maintenance employees which expired on June 30, 1975; that between about June 16, 1975 to about September 11, 1975 [the Intervenor] bargained collectively with...[the representative of the multi-employer unit]... including the Employer herein, concerning the terms of a renewal collective bargaining agreement; that on or about September 11, 1975 the Employer herein resigned from the [multi-employer unit] and thereafter requested that [the Intervenor] bargain with it on an individual employer basis, and that on or about September 17, 1975 [the Intervenor] agreed in writing to resume bargaining with the Employer herein on an individual employer basis. However, thereafter [the Intervenor] never requested that the Employer meet with [it] to bargain collectively....

The Intervenor appealed to the General Counsel of the Board to review the decision of the Regional Director, above. The General Counsel by letter of February 24, 1976 denied the appeal substantially for the reasons set forth by the Regional Director

It is now well settled that the Board will not allow the relitigation in representation cases of issues resolved by the General Counsel in prior unfair labor practice proceedings.^{4/} The question of the timeliness and propriety of the withdrawal of the Employer from the multi-employer unit has been resolved in Case No. 29-CA-4619 contrary to the Intervenor.^{5/} In effect the Intervenor is seeking here to reverse the General Counsel's determination.

The single-employer unit of the Employer's production and maintenance employees which the Petitioner here seeks to represent is a presumptively appropriate unit.^{6/} Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining:

All production and maintenance employees employed by North Shore Fabricators and Erectors, Inc., at its 2616 Chestnut Street, Ronkonkoma, New York, location, excluding all erectors, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the

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4/ Service Employees International Union, Local 227 (Children's Rehabilitation Center, Inc., 211 NLRB No. 120, slip op. at 2; Times Square Stores Corp., 79 NLRB 361, 365-66 (1948), cited approvingly, Advance Industrial Security, Inc., 217 NLRB No. 1, slip op. at 4.

5/ In its brief, the Intervenor argues that it has been denied a hearing to which it is entitled. That argument and the cases cited in its support are inapposite because the position of the Intervenor has been fully heard in the prior unfair labor practice proceedings. See, n⁴., supra.

6/ Marks Oxygen Co. of Alabama, 147 NLRB 228, 230 (1964).

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date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Local 819, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; by Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO; or by neither.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. Tyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 16 Court Street, Brooklyn, New York 11241 on or before June 22, 1976. No extension of time to file

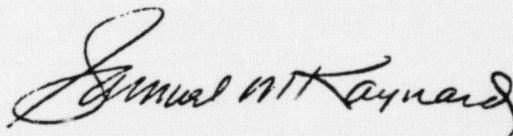
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this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, D. C. 20570. This request must be received by the Board in Washington by June 28, 1976.

Dated at Brooklyn, New York this 15th day of June, 1976.



Samuel M. Kaynard
Regional Director, Region 29
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

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SIPSER, WEINSTOCK, HARPER, DORN & LEIBOWITZ
ATTORNEYS AT LAW

I. PHILIP SIPSER
HARRY WEINSTOCK
BELLE HARPER
RICHARD L. DORN
LEONARD LEIBOWITZ

380 MADISON AVENUE
NEW YORK, N. Y. 10017
(212) 867-2100

ALAN P. HOWE
ADMITTED TO
PRACTICE IN PENNSYLVANIA
1010 BANKERS SECURITIES BUILDING
PHILADELPHIA, PA 19107
(215) 732-0708

SIDNEY S. BERMAN
DONALD E. KLEIN
ELMER H. BEBERFALL
JEROME TAUBER
VICKI ERENSTEIN
MICHAEL SCHNIPPER

June 18, 1976

Hon. Samuel Kaynard, Regional Director
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

Re: North Shore Fabricators and
Erectors Inc.
29-RC-3182

Dear Mr. Kaynard:

On behalf of our client, Shopmen's Local Union No. 455, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO, ("Local 455") we urgently request that the election directed in the above-referenced matter pursuant to the Decision and Direction of Election dated June 15, 1976 be conducted on or before June 30, 1976, in order to prevent the disenfranchisement of the striking North Shore employees. The relevant background is as follows:

Local 455 is the collective bargaining representative of the employees of North Shore Iron Works, and the parties have maintained a contractual relationship for a number of years. On July 1, 1975, after the expiration of the collective bargaining agreement on June 30, the employees of North Shore commenced a strike, which continues to date. On September 26, Local 819, International Brotherhood of Teamsters, filed the instant petition. Thereafter, on October 2, Local 455 filed unfair labor practice charges in Case No. 29-CA-4619, alleging violations of §§8(a)(1)(2)(3) and (5) of the Act in that North Shore had unlawfully assisted Local 819 by hiring its members as bogus "employees" for the purpose, inter alia, of eliminating Local 455 as the bargaining representative of its employees, and that the

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Hon. Samuel Kaynard

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June 18, 1976

Employer had unlawfully refused to bargain with Local 455. On December 23, 1975, the Regional Director of Region 29 sent out a refusal to issue a complaint in that matter. An appeal to the General Counsel was denied by a letter dated February 24, 1976.

A hearing was held on the instant petition on February 4 and 5, and a brief was submitted shortly thereafter on behalf of Local 455. Thereafter, on March 16, 1976, a second charge was filed on behalf of Local 455, alleging that the employer had unlawfully and unilaterally changed the terms and conditions of employment without bargaining with Local 455. The Regional Director refused to issue a complaint by a letter dated April 30, 1976. No appeal was taken.

The Direction of Election herein provides, inter alia, that

"[i]neligible to vote are . . . employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced."

It is urged that since the Local 455 strike commenced on July 1, 1975, unless the election herein is held on or before June 30, 1976, the striking employees may be denied their statutory right to select a bargaining representative.

The Board has long recognized that the intent of Congress embodied within §9(c)(3) of the Act was to favor the enfranchisement of economic strikers within the first year of a strike. In effectuating the policy of Congress, the Board in Kingsport Press, 146 NLRB No. 136, ordered that an election be conducted prior to the deadline for submission of a post-hearing brief in order to come within the twelve-month period and to preserve the franchise of the economic strikers. The Board reasoned:

". . . The strike as previously indicated, commenced March 11, 1963, and is still in progress. Under Section 9(c)(3) of the Act, as amended, 'employees engaged in an economic

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June 18, 1976

strike, who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike. [Emphasis supplied.] It may thus be seen that unless the elections sought herein are held before the expiration of the indicated 12-month period, those strikers who have been replaced will be rendered ineligible to vote. Therefore, in order to implement to the extent possible the congressional intent to enfranchise replaced strikers during the first 12 months of an economic strike, we have decided to direct an election to be held no later than March 10, 1964, without awaiting any briefs which parties may file. We believe that this procedure, although a departure from that normally followed, is warranted by the circumstances and will effectuate the purposes and policies of the Act. . . ." [Emphasis supplied.]

See also the Supplemental Decision and Order in the same case, 146 NLRB No. 137, fn. 4. Accord, American Metal Products Company, 139 NLRB No. 39.

The Regional Director is urged in the instant case to apply the Congressional policy favoring enfranchisement of strikers as embodied in §9(c)(3) by ordering an election to be held within the twelve-month period.

The requirements of the Board doctrine embodied in the Excelsior Underwear case do not pose an obstacle to the conduct of a speedy election herein. It is requested that the Regional Director order the Employer to produce the Excelsior list at the Regional Office by the close of business on this day.* The quick compilation of the list should not

* Local 455's representatives are available to pick up the list and to deliver it to the Region and to Local 819.

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Hon. Samuel Kaynard

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June 18, 1976

unduly inconvenience the Employer inasmuch as the names and addresses of the strikers and the alleged replacements are already contained in the record of the pre election hearing as Employer's Exhibit Nos. 1 and 2. The Board has recognized that the requirements of the Excelsior case may be relaxed where extenuating circumstances are present. Cf., Chemical Technology, Inc., 214 NLRB No. 50. We submit that extenuating circumstances are present. Rather than a relaxation of the Excelsior rule, we request that the Regional Director require the prompt submission of the list to accommodate and effectuate the Congressional policy that employees be permitted to vote and select the bargaining representative of their choice.

If the Regional Director declines to order the submission of the Excelsior list on this day, in the alternative, we urge that the Regional Director nevertheless has the authority to order that the election be conducted by the end of the month. See Peerless Eagle Coal Co., 220 NLRB No. 62. The 10-day waiting period after submission of the Excelsior list set forth in the Field Examiner's Manual may be shortened by the Regional Director to accommodate the statutory rights of employees which may otherwise be irretrievably lost.

Finally, it must be noted that Local 455 has done nothing to delay the proceedings herein so as to threaten the rights of its striking members by causing the election to be held after the one-year period. The hearing in this matter was held on February 4 and 5. The Regional Director had ample time to issue a decision and direction of election so as to preserve the strikers' rights.*

For the foregoing reasons, we respectfully request that the Employer be ordered to submit the Excelsior list

* Indeed, even if the Regional Director held his decision in abeyance pending the outcome of the companion unfair labor practice case, that case was closed on June 3, in time for the direction of an election before the end of the year. Moreover, an election could have been ordered while the charge was pending. See American Metals, supra.

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Hon. Samuel Kaynard

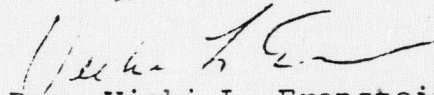
-5-

June 18, 1976

list immediately and that a notice of election issued for
a date on or before June 30, 1976.

Very truly yours,

SIPSER, WEINSTOCK, HARPER, DORN & LEIBOWITZ



VLE:iat

By: Vicki L. Erenstein

10a

QJA031 945A NL BJ BROOKLYN NY 6-24-546P EST
PMS GUTTERMAN & POLLACK ATTN SANFORD POLLACK ESQ
71 SOUTH CENTRAL AVE VALLEY STREAM NY 11580
RE NORTH SHORE FABRICATORS AND ERECTORS INC
CASE NO. 29-RC-3182

GENTLEMEN:

THIS IS TO CONFIRM NOTIFICATION THAT THE ELECTION HEREIN IS
SCHEDULED FOR JUNE 30, 1976, FROM 9:00AM TO 12:00 NOON IN A BUS
TO BE PARKED IN FRONT OF THE EMPLOYERS PREMISES AND THAT THE
BALLOTS WILL BE IMPOUNDED

SAMUEL M KAYNARD

REGIONAL DIRECTOR

NATIONAL LABOR RELATIONS BOARD

16 COURT ST BROOKLYN NY 11241

EXHIBIT A

western union

Telegram

BJB159(1527)(2-042941E176)PD 06/24/76 1527

ICS IPMMTZZ CSP

5165610430 TDMT VALLEY STREAM NY SE 06-24 0327P EST

PMS SAMUEL KAYNARD, REGIONAL DIRECTOR, DLR
NATIONAL LABOR RELATIONS BOARD REGION 29 16 COURT ST

BROOKLYN NY 11241

REFERENCE NORTH SHORE FABRICATORS CASE 29-RC-3182 OBJECTION IS

HEREBY MADE TO THE CONDUCTING OF AN ELECTION ON JUNE 30 THE
FOREGOING VIOLATES THE DIRECTION OF ELECTION HERETOFORE HAD AS WELL

AS PLACES THE EMPLOYER IN A POSITION OF HAVING TOTALLY OBJECTIONABLE
ELECTION SINCE THE EXCELSIOR LIST WAS PREDICATED UPON THE

REQUIREMENT THAT THE PARTIES BE AFFORDED 10 DAYS ADVANCE NOTICE OF
THE ELIGIBLE EMPLOYEES WHICH WOULD HAVE OF NECESSITY MADE THE

EXCLUSION OF CERTAIN FORMER EMPLOYEES PROPER UNDER THESE

CIRCUMSTANCES THE LIST IS IMPROPER AND NO ELECTION SHOULD BE HAD

BASED ON SUCH A LIST
SF-1201 (R5-69)

western union

Telegram

GUTTERMAN AND POLLACK ATTORNEYS FOR NORTH SHORE CO: SHOPMENS

LOCAL 455

NNNN

Western Union

Telegram

BUJ161(1540)(2-044167E176) PD 06/24/76 1539

ICS IPMYTZZ CSP

5165610430 MGM TDMT VALLEY STREAM NY 100 06-24 0339P EST

PMS SAMUEL KAYNARD, REGIONAL DIRECTOR

NATIONAL LABOR RELATIONS BOARD REGION 29

16 COURT ST

BROOKLYN NY 11241

REFERENCE NORTH SHORE FABRICATORS CASE 29-RC-3182 REQUEST IS HEREBY
MADE FOR A STAYING THE CONDUCTING OF AN ELECTION IN THE ABOVE
CAPTIONED CASE WHICH IS PRESENTLY FOR JUNE 30 THE SHORTCUTTING OF
THE EXCELSIOR REQUIREMENTS BY THE REGIONAL DIRECTOR HAS CAUSED THE
EMPLOYER TO HAVE SUBMITTED AN IMPROPER EXCELSIOR LIST WHICH WOULD
RENDER ANY ELECTION VOIDABLE IT IS RESPECTFULLY SUBMITTED THAT NO
ELECTION CAN BE PROPERLY HAD UNTIL AFTER JULY 2 1976

SF-1201 (R5-69)

Western Union

Telegram

GUTTERMAN AND POLLACK
ATTORNEYS FOR NORTH SHORE

NNNN

SF-1201 (R5-69)

N.F.

13

(2)

added set

NLRB WSH

WJ WSH

TLXA206

WAC183(1534)(2-043686E176)PD 06/24/76

ICS IPMMTZZ CSP

5165610430 TDMT VALLEY STREAM NY 98 06-24 0334P EST

PMS NATIONAL LABOR RELATIONS BOARD, DLR

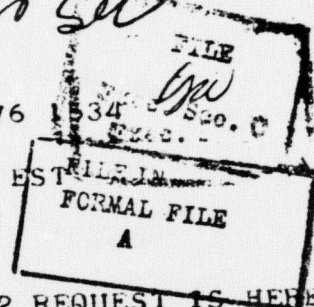
1717 PENNSYLVANIA AVE NORTHWEST

WASHINGTON DC 20570

REFERENCE NORTH SHORE FABRICATORS CASE 29-RC-3182 REQUEST IS HEREBY
MADE FOR A STAYING THE CONDUCTING OF AN ELECTION IN THE ABOVE
CAPTIONED CASE WHICH IS PRESENTLY FOR JUNE 30 THE SHORTCUTTING OF
THE EXCELSIOR REQUIREMENTS BY THE REGIONAL DIRECTOR HAS CAUSED THE
EMPLOYER TO HAVE SUDNITED AN IMPROPER EXCELSIOR LIST WHICH WOULD
RENDER ANY ELECTION VOIDABLE IT IS RESPECTFULLY SUBMITTED THAT NO
ELECTION CAN BE PROPERLY HAD UNTIL AFTER JULY 2 1976

GUTTERMAN AND POLLACK ATTORNEYS FOR NORTH SHORE

NNNN



1110P EDT JUNE 24

WU WSH

NLRB WSH

WASHINGTON, D.C. 20570

76 JUN 25 AM 9:09

RECEIVED
NLRB
MAIL ROOM



MGM-SHT HSE

2-045037E176 06/24/76

ICS IPMTZZ CSP

5163682922 MGM TDMT COMPACK NY 249 06-24 0348P EST

N.F.

J THUESDALE EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
WASHINGTON DC 20570

FORMAL FILE
A

NORTHSIDE WITH LOCAL 819 WITH LOCAL 455 CASE NUMBER 29-CA-4917

49-RO-3182

DEAR SIR:

I HAVE JUST BEEN ADVISED THAT MY OFFICE HAS JUST BEEN NOTIFIED BY TELEPHONE THAT THE ELECTION IN THE CAPTIONED MATTER HAS NOW BEEN SCHEDULED FOR JUNE 30 1976. WHAT WAS PURPORTED TO BE AN EXCELSIOR LIST WAS ALLEGEDLY CALLED IN AT THE SAME TIME. NO WRITTEN NOTICE OF SUCH EXCELSIOR LIST HAS BEEN RECEIVED TO DATE.

IT IS WELL ESTABLISHED THAT A LABOR ORGANIZATION IS ENTITLED TO AN EXCELSIOR LIST NOT LESS THAN TEN DAYS PRIOR TO THE SCHEDULED DATE OF THE ELECTION. WHETHER IT BE THE BOARD OR THE REGION, IN THIS INSTANCE MY CLIENT HAS BEEN DEPRIVED OF ITS ESTABLISHED RIGHT TO SUCH LIST FOR SAID TEN DAY PERIOD AND IN FACT BECAUSE OF THE LATENESS OF THE HOUR, 4:00 PM, AS A PRACTICAL MATTER SAME WILL NOT BE OF ANY VALUE UNTIL JUNE 25.

THE PURPOSE OF PROVIDING SUCH A LIST IS TO ALLOW THE LABOR ORGANIZATION TO CONDUCT AN ORGANIZING CAMPAIGN THAT WOULD BE MEANINGFUL. IT IS RESPECTFULLY SUBMITTED THAT NO SUCH CAMPAIGN CAN BE EFFECTIVELY BEGUN WITH SUCH LITTLE TIME TO WORK BEFORE THE ELECTION.

I SUBMIT THAT THE PROCEDURE BEING FOLLOWED IS IMPROPER AND PREJUDICIAL TO MY CLIENT AND THAT IF THE BOARD PERMITS THIS ELECTION TO GO FORWARD SUCH ELECTION WILL BE VACATED.

ROBERT JAY DINERSTEIN
ATTORNEY FOR LOCAL 819
26 COURT ST
BROOKLYN NY 11242

15:48 EST

MGMCDMP MGM

MGMNYAT HSB
2-043752E176 06/24/76

ICS 12MM22 CSP

5163688922 MGM TDMT CLIMACK NY 164 06-24 0334P EST



15
Mailgram®



SAMUEL KEYNARD REGIONAL DIRECTOR
REGION 29 NATIONAL LABOR RELATIONS BOARD
16 COURT ST
BROOKLYN NY 11241

CASE NUMBER 29-CA-4917 NORTHSORE WITH LOCAL 455 AND WITH LOCAL 819

AT 4:40 PM ON JUNE 24, 1976 I DID FIRST RECEIVE WORD THAT WHAT IS
PURPORTED TO BE AN EXCELSIOR LIST IN THE CAPTIONED MATTER HAD JUST BEEN
CALLED IN TO MY OFFICE AND WAS FURTHER ADVISED THAT THE ELECTION IN THE
CAPTIONED MATTER HAS BEEN SET FOR JUNE 30, 1976.

THIS ACTION ON BEHALF OF THE BOARD HAS EFFECTIVELY PRECLUDED MY CLIENT
FROM BEGINNING ITS ORGANIZATIONAL EFFORTS UNTIL JUNE 25, 1976 AND
FURTHERMORE HAS DEPRIVED MY CLIENT OF THE TEN DAY PERIOD TO WHICH IT IS
ENTITLED TO CONDUCT ITS ORGANIZATIONAL CAMPAIGN AFTER RECEIPT OF THE
EXCELSIOR LIST.

I RESPECTFULLY SUBMIT THAT UNDER THE CIRCUMSTANCES THE BOARD'S ACTION IS
TOTALLY IMPROPER AND THAT THE ELECTION IF HELD SHOULD BE VACATED

ROBERT JAY DINERSTEIN
ATTORNEY FOR LOCAL 819
26 COURT ST
BROOKLYN NY 11242

16:35 EST

MGMCOMP MGM

Northshore

15a

Employer's
Exhibit 1

(1)

NAME	WEEK
THOMAS BELLE	
ROBERT LAUREANO	
SAHALUD DIN ABDUR RA	
ALFREDO SERRANO JR.	
WILFREDO RIVERA	
WILSON RAMIREZ	
ALFREDO FELICIANO	
EDMUND PAUL	
GEORGE MARRERO	
JOHN RODRIQUEZ	
JOSEPH LAGARE	
NORMAN FAGAN	
GUY FANNING	
RICHARD FANNING JR	

List
of replacement



16
NATIONAL LABOR RELATIONS BOARD

REGION 29

16 Court Street

Brooklyn, New York 11201

Telephone 596-3535

June 25, 1976

Local 455, Ironworkers
853 Broadway
New York, N.Y.

Local 819, IBT
200 Park Avenue South
New York, N.Y. 10003

Re: Northshore Fabricators & Erectors Inc.
Case No. 29-RC-3182

Gentlemen:

Enclosed herein is a list of striking employees who were not included on the Excelsior list previously submitted by the Employer.

Very truly yours,

Paulette T. Slavinskas
Board Agent

cc: Sipser, Weinstock, Harper & Dorn
380 Madison Ave.
New York, N.Y. 10017

Robert J. Dinerstein, Esq.
26 Court St.
Brooklyn, N.Y. 11242

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Re: W. B. Shore Yabejentoest
ER 405, Inc. 29-RC-3180

~~ALL~~ NAMES of STRIKERS on Payroll as of June 9, 1946.

Allan Vooris

281 Woodlawn Avenue
Ronkonkoma, N.Y. 11779

George Stonish

25 MacArthur Boulevard So.
Hauppauge, N.Y. 11787

Hayri Tansel

655 Taylor Avenue
East Patchogue, N.Y.

Richard Bowling

2723 Locust Avenue
Ronkonkoma, N.Y. 11779

John Klug

62 Yaphank Avenue
Yaphank, N.Y. 11980

William Fay

35 Bay Avenue
Ronkonkoma, N.Y. 11779

Kenneth Jacobson

587 Johnson Avenue
Ronkonkoma, N.Y. 11779

Charles Swaringen

248 Terry Road
Smithtown, N.Y. 11787

Joseph Wolek

49 Satinwood Street
Central Islip, N.Y. 11722

Andrew Molfetta

8 Kneutz Lane
Holtsville, N.Y. 11742

William Wilken

347 McConnell Avenue
Bay Port, N.Y. 11705

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[Handwritten signature]

SIPSER, WEINSTOCK, HARPER, DORN & LEIBOWITZ

ATTORNEYS AT LAW

380 MADISON AVENUE

NEW YORK, N. Y. 10017

(212) 867-2100

ALAN R. HOWE

ADMITTED TO

PRACTICE IN PENNSYLVANIA

1010 BANKERS SECURITIES BUILDING

PHILADELPHIA, PA. 19107

(215) 732-0708

I. PHILIP SIPSER
HARRY WEINSTOCK
BELLE HARPER
RICHARD L. DORN
LEONARD LEIBOWITZ

SIDNEY S. BERMAN
DONALD E. KLEIN
ELMER H. BEBERFALL
JEROME TAUBER
VICKI ERENSTEIN
MICHAEL SCHNIPPER

June 25, 1976

Executive Secretary
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

Re: North Shore Fabricators
and Erectors Inc.
Case No. 29-RC-3182

Gentlemen:

Pursuant to Section 102.67 of the Rules and Regulations of the Board, the undersigned, on behalf of Intervenor, Shopmen's Local Union No. 455 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (hereinafter "Local 455") hereby requests review of the Decision and Direction of Election of the Regional Director of Region Twenty-Nine in the above-referenced matter, dated June 15, 1976. (A copy of the Regional Director's Decision and Direction of Election is attached hereto.)

We contend that compelling reasons exist for review of said decision, in that substantive questions of law and policy are raised because of a departure from officially reported Board precedent, and the conduct of the hearing and rulings made in connection with the proceeding have resulted in prejudicial error.

The record reveals that Local 455 was deprived of a fair hearing in that the Hearing Officer refused to permit any evidence as to fundamental questions which are properly

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Executive Secretary
National Labor Relations Board

-2-

June 25, 1976

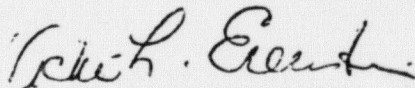
raised in a representation proceeding including the appropriateness of a single employer bargaining unit, the status of certain persons alleged to be employees, and the issue of a contract bar. Moreover, the Hearing Officer refused to permit cross-examination or rebuttal testimony by Intervenor on the limited testimony adduced on direct examination. As a result, the proceeding was wholly lacking in due process and in violation of Section 9(c) of the Act, the Rules and Regulations of the Board, and its procedural guidelines.

In his decision, the Regional Director, in reply to the position of Local 455 that it was denied a hearing, stated that the contentions of Local 455 with respect to the appropriateness of the unit had been fully heard in a prior unfair labor practice proceeding. (Decision of Regional Director, footnote 5.) On the contrary, Intervenor has never had the opportunity to present evidence regarding the appropriateness of the unit, the contract bar issue or the status of employees at any hearing.^{*} The grounds upon which review is requested are fully set forth and discussed in the brief originally submitted to the Regional Director in this matter. Accordingly, this brief is annexed hereto and made a part of the request for review.

For all of the reasons set forth in the accompanying memorandum, it is respectfully requested that review be granted and that intervenor be afforded the opportunity of a full and fair hearing.

Very truly yours,

SIPSER, WEINSTOCK, HARPER, DORN & LEIBOWITZ



By: Vicki L. Erenstein

VLE:iat
Encl.

* Indeed, no hearing was ever held upon the unfair labor practice charges.

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NAME OF AGENCY NATIONAL LABOR RELATIONS BOARD REGION 29		PRECEDENCE	
ACCOUNTING CLASSIFICATION CNY 131960		ACTION: INFO: TYPE OF MESSAGE ☒ SINGLE ☐ BOOK ☒ MULTI-ADDRESS	
THIS BLOCK FOR USE OF COMMUNICATIONS UNIT		CLASSIFICATION STANDARD FORM 14 MARCH 1957 GENERAL SERVICES ADMINISTRATION FPMR (41CFR) 101-35.306 TELEGRAPHIC MESSAGE OFFICIAL BUSINESS U. S. GOVERNMENT	
MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)		THIS COL. FOR AGENCY USE	
June 28, 1976 REPORT DELIVERY RE: NORTH SHORE FABRICATORS AND ERECTORS, INC. CASE NO. 29-RC-3182 AS YOU WERE PREVIOUSLY ADVISED, THE ELECTION SCHEDULED HEREIN WILL BE HELD ON A BUS PARKED OUTSIDE THE EMPLOYER'S PREMISES. THE EMPLOYER'S ADDRESS IS 2416 CHESTNUT AVENUE, RONKONKOMA, NEW YORK. Samuel M. Kaynard Regional Director National Labor Relations Board Region 29 16 Court Street Brooklyn, New York 11241		DO NOT TYPE MESSAGE BEYOND THIS LINE	
NAME AND TITLE OF ORIGINATOR (Type)		ORIGINATOR'S TEL. NO.	DATE AND TIME PREPARED
I certify that this message is official business, is not personal, and is in the interest of the Government.		SECURITY CLASSIFICATION	
(Signature)			

Western Union

21
Telegram

BJA056(0926)(2 012877E180)PD 06/28/76 0926

ICS IPMMTZZ CSP

5165612261 TMT VALLEY STREAM NY 56 06 28 0926A EST

PMS THE NATIONAL LABOR RELATIONS BOARD REGION 29 REPORT DELIVERY
BY MAILGRAM , DLR

16 COURT ST

BROOKLYN NY 11241

CASE NUMBER 29 RC 3182 NORTH SHORE

UNABLE TO INSURE SECURITY OF POTENTIAL LOCAL 819 VOTERS THEY REFUSE
TO GO TO A BUS AT PLANT TO VOTE BECAUSE OF THE EASE OF WHICH THEY
CAN BE SINGLED OUT AND ATTACKED REQUEST THAT BOARD HOLD THE ELECTION
AT ITS OFFICES

ROBERT JAY DINERSTEIN ATTORNEY FOR LOCAL 819

NNNN

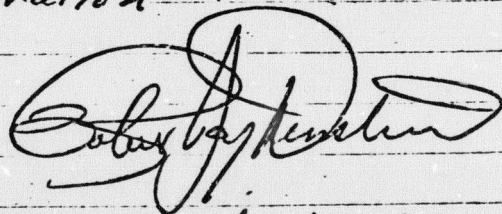
22

To: Paulette Slavinskas
Region 29
National Labor Relations Board

RE: North Shore
Fabricators
29-RC 3182

Please deem this an official request ~~to hold~~ that if the election in the captioned matter be held on June 30, 1976 that such election be held at the board at ~~216~~ 16 Court St. Brooklyn on the grounds that the employees ~~repr~~ who signed cards for Local 819 have been put in fear of their life & health by the strikers & have required police protection at the employer's premises.

Thank you for your consideration in this matter.



Attorney for Local 819

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hnt 76

NAME OF AGENCY NATIONAL LABOR RELATIONS BOARD REGION 29		PRECEDENCE		SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION CYN-131960		ACTION:		
THIS BLOCK FOR USE OF COMMUNICATIONS UNIT		INFO:		
		TYPE OF MESSAGE ☒ SINGLE ☐ BOOK ☐ MULT-ADDRESS		
MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)				STANDARD FORM 14 MARCH 1957 GENERAL SERVICES ADMINISTRATION FPMR (41CFR) 101-35.306
REPORT DELIVERY JUNE 28, 1976 ROBERT J. DINNERSTEIN, ESQ. 26 COURT STREET BROOKLYN, NEW YORK 11201 Re: NORTH SHORE FABRICATORS AND ERECTORS INC. CASE NO. 29-RC-3182 YOUR REQUEST THAT BOARD HOLD ELECTION AT REGIONAL OFFICE RATHER THAN ON BUS AT EMPLOYER'S PLANT, AS SCHEDULED, IS HEREBY DENIED. SAMUEL M. KAYNARD REGIONAL DIRECTOR REGION 29 NATIONAL LABOR RELATIONS BOARD 16 Court Street Brooklyn, New York 11241 cc: North Shore Fabricators & Erectors, Inc. 24K 2415 Chestnut Street Avenue Ronkonkoma, N.Y. 11779 Att: Mr. Richard Fanning Guterman & Pollack, Esqs. 71 South Central Avenue Valley Stream, N.Y. 11580 Local 819, IBT 200 Park Avenue South New York, N.Y. 10003 Shopmen's Local Union No. 455, AFL-CIO 853 Broadway New York, N.Y. 10003 Att: Wm. Colovito, Pres. Sipser, Weinstock, Harper & Dorn Esqs. 380 Madison Avenue New York, N.Y. 10017 Att: Belle Harper, Esq.				TELEGRAPHIC MESSAGE OFFICIAL BUSINESS U. S. GOVERNMENT
				THIS COL. FOR AGENCY USE
NAME AND TITLE OF ORIGINATOR (Type)		ORIGINATOR'S TEL. NO.		PAGE NO. .
I certify that this message is official business, is not personal, and is in the interest of the Government.		DATE AND TIME PREPARED		NO. OF PAGES
(Signature)		SECURITY CLASSIFICATION		

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TELEGRAPHIC MESSAGE

NAME OF AGENCY		PRECEDENCE ACTION INFO.	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED		TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL			
NAME	PHONE NUMBER		
THIS SPACE FOR USE OF COMMUNICATION UNIT			
MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)			
TO: TELETYPE NLRB REGION 29 NLRB BROOKLYN, N. Y. RE: NORTHSHORE FABRICATORS AND ERECTORS, INC. 29-RC-3182 REQUEST BY EMPLOYER AND PETITIONER TO STAY ELECTION SCHEDULED FOR JUNE 30, 1976 FOR REASONS STATED ARE HEREBY DENIED. BY DIRECTION OF THE BOARD: (MEMBERS XXXXXXXX PENELLO AND WALTER DISSENTING). MARIO LAURO, JR. ASST. EX. SECY. NLRB WASHINGTON, D. C. 6/30/76 1:05 p.m. FH:DB			
		PAGE NO.	NO. OF PGS.
		SECURITY CLASSIFICATION	

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**Guterman
& Pollack**
ATTORNEYS AT LAW

Irving Guterman (1952)
Samuel E. Pollack

OF COUNSEL:

Gerald J. Gardner

Leonard Kreinberg

Morris S. Press

Seventy-one

South Central Avenue

Valley Stream, N.Y. 11580

(516) 561-0430

July 6, 1976

National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York

Re: Case No. 29-RC-3182

Gentlemen:

This office, which represents the Employer, North Shore Fabricators & Erectors, Inc. has not been served with a list of those persons challenged nor has the Employer received such list. Nevertheless, in keeping with the telegraphic direction of the Region, does herewith continue its challenge of all striking employees based upon the facts that:

- (1) Strikers who obtained permanent jobs elsewhere were presented for balloting.
- (2) The application of Board's published rules and regulations would have excluded each and every striker under the decision and direction of election herein.
- (3) No list, including the names of those challenged was supplied in accordance with "Excelsior" to the Employer nor by the Employer.
- (4) The strikers were terminated.
- (5) The strikers were permanently replaced.
- (6) Those ballots challenged by the Employer did not represent ballots cast by Employees in the unit.

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Guterman
H. Pollack

National Labor Relations Board
Region 29
July 6, 1976
Page 2

As an objection to the conduct of the election, the Employer contends that it did not have sufficient time to campaign amongst the strikers from the announcement by the Region of their eligibility.

Very truly yours,

GUTERMAN & POLLACK

Sanford E. Pollack

SEP:pag

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

NORTH SHORE FABRICATORS
AND ERECTORS, INC.

Employer

and

Case No. 29-RC-3182

LOCAL 819, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Petitioner

SUPPLEMENTAL DECISION ON OBJECTIONS AND CHALLENGED BALLOTS

Upon a petition filed on September 26, 1975, and pursuant to ^{1/} a Decision and Direction of Election issued by the Regional Director of Region 29 on June 15, 1976, an election by secret ballot was conducted on June 30, 1976, in a unit of all production and maintenance employees employed by the Employer at its 2616 Chestnut Street, Ronkonkoma, New York, shop, excluding all erectors, office clerical employees, guards and supervisors as defined in the National Labor Relations Act, herein called the Act.

The Tally of Ballots served upon the parties following the conclusion of the election showed that the ballots had been impounded by the Board agent conducting the election. The list of challenged ballots maintained by the Board agent shows that all sixteen individuals who presented themselves at the polls were challenged. The challenged ballots are sufficient to affect the results of the election.

The Employer challenged eleven voters on the grounds that they were not employees in the unit during the eligibility period for the election. Those eleven are: Richard Bowling, Charles Swaringen, William Wilkes, Andrew Molfetta, George Stonish, William Fay, John Klug, Kenneth Jacobsen, Hayri Tansel, Allen Vooris, and Joseph Wolek.

^{1/} Shopmens Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, intervened in this proceeding, on the basis of a contractual interest.

Local 455 challenged William Alesius on the ground that he was not employed in the unit during the eligibility period. The Board agent challenged Stuart Jacobson, Mark Jacobson, Richard Fanning and Thomas Fanning on the grounds that their names did not appear on the eligibility lists submitted prior to the election, and upon the grounds that they were relatives of management officials and owners of the Employer corporation. Finally, by letter of July 6, 1976, Local 819 filed what it described to be "challenges [of] each and every voter who cast ballots in the election based upon the inappropriateness of the excelsior [sic] list...." The letter was received by the Regional Office on July 8, 1976.

On July 7, 1976, the Employer filed a timely objection to conduct affecting the results of the election. The objection alleged the following

As an objection to the conduct of the election, the Employer contends that it did not have sufficient time to campaign amongst the strikers from the announcement by the Region of their eligibility.

On July 6, 1976, Local 819 filed timely objections to conduct affecting the results of the election. The objections alleged the following:

- (1) Employer did not supply the required list of eligible employees in that close to fifty percent (50%) of the eligible voters were omitted.
- (2) List of eligible voters were not given to Petitioner sufficiently in advance of election.
- (3) Employer did not post the notice of election as required.
- (4) Employer campaigned against the Petitioner up to and including the time when the election was being conducted.
- (5) Employer threatened its employees with the losing of his business if any union won the election.
- (6) Campaign literature contained untrue statements.
- (7) Campaign literature contained misleading statements and were made at a time when the Petitioner did not have sufficient time to rebut or correct the same.

(8) Election was conducted at a location where each voter had full view of an anti-union sign erected by the Employer.

(9) Board permitted ballots to be cast at a place other than that designated in its own order.

(10) Ballots were cast in the open air so that the balloting was done in full view of each voter, observers and many other union officials who should not have been able to make these observations thereby destroying the secrecy of the ballot.

(11) Board failed to schedule the election at a location which would ensure the voter knowledge of their security in a situation which has been punctuated with violence.

(12) The normal election process was not adhered to when unilateral applications were made to Washington without notice to all parties and without all parties being given an opportunity to be heard.

(13) The Region did not conform to its previous and/or usual rules and regulations in the conduct of the election.

(14) The Region did not give sufficient and timely notice of the election.

Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, the undersigned Regional Director caused an investigation to be conducted concerning the challenged ballots and the objections. During the investigation, the parties were afforded full opportunity to submit evidence bearing on the issues raised by the challenges and objections. The Regional Director also caused an independent inquiry to be made. The investigation disclosed the following.

Challenges

The letter filed by Local 819, purporting to challenge all the voters who appeared at the polls, was dated July 6, 1976 and received July 8th, well after the date of the election, June 30, 1976. It is now well settled that the Board will not entertain challenges to ballots after the ballots have been deposited in the ballot box.^{2/} Consequently, Local 819's postelection challenges here to all the ballots cast are found

^{2/} N.L.R.B. v. A.J. Tower Co., 329 U.S. 324, 331-32 (1946), enf'g 60 NLRB 1414 (1945).

to have been made in an untimely fashion and are without effect in this case.

Richard Bowling, Charles Swaringen, William Wilkes, William Fay, John Klug, Kenneth Jacobsen, Hayri Tansel

All of these voters were challenged by the Employer on the dual grounds that they were economic strikers who had been permanently replaced, and that they had abandoned the strike and their interest in their employment with the Employer. As to the first ground, the strike against the Employer commenced on July 1, 1975. The election was held on June 30, 1976. Section 9(c)(3) of the Act contains the definition of economic strikers eligible to vote in a Board election. It states, in relevant part:

Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote... in any election conducted within twelve months after the commencement of the strike....

The election here was held within the twelfth month after the strike began and consequently all the strikers, even if replaced, were eligible under this rule.

The Employer's remaining ground for these challengers is that the named strikers had abandoned the strike and all interest in their employment with the Employer. The only evidence presented by the Employer on this issue was that Bowling, Swaringen, Wilkes, Fay, Klug and Tansel had obtained other employment during the course of the strike. No evidence was presented by the Employer concerning Jacobsen. The evidence related by the Employer showed that these workers, even though finding some other employment, remained living in the same geographic area as they had prior to the strike. The picketing at the Employer's premises continued through the time of the election and this investigation.

The law is now settled that an economic striker is presumed to continue in that status, and remain eligible to vote, unless it is affirmatively shown by objective evidence that he has abandoned his interest in his struck employment. It is equally well-settled that

acceptance of other employment, even without being conditioned as temporary employment, will not of itself be evidence to render the striker ineligible in a Board election.^{3/} Here it is clear that no sufficient showing has been made to establish that these economic strikers have abandoned their interest in their struck employment with the Employer. Accordingly, I will overrule the challenge to the ballots cast by Richard Bowling, Charles Sweringen, William Wilkes, William Fay, John Klug, Kenneth Jacobsen, and Hayri Tansel.

^{3/} Pacific Tile and Porcelain Co., 137 NLRB 1358, 1359-61 (1962); cited approvingly, Akron Engraving Co., 170 NLRB 232, 233-34 (1968).

ANDREW MOLFETTA AND JOSEPH WOLEK

The Employer challenged these voters on the grounds that they had been terminated from their employment prior to the strike and consequently were not employees of the Employer at any time during the strike and certainly not during the eligibility period here. The Employer contends that Molfetta was employed temporarily by it during December 1974 and was laid off no later than the first part of January 1975. According to the Employer, Molfetta was regularly employed by another, now defunct employer and not by the Employer when the strike began on July 1, 1975. Local 455 asserts that Molfetta had been regularly employed by the Employer for upwards of five years when he was laid off, and enjoyed recall rights for eighteen months following his lay off. This would have made him subject to recall as a laid off employee during the eligibility period, the week of June 9, 1976. Thus it appears that the evidence obtained in the investigation raises substantial and material issues of fact, including issues of credibility, concerning the eligibility of Molfetta, which may best be resolved by a hearing.

The Employer contends that Joseph Wolek was laid off because of lack of work in early 1975. Wolek enjoyed recall rights for eighteen months following his lay off. Accordingly, during June 1976, the time of the eligibility period and the election, Wolek was a laid off employee with a reasonable expectancy of recall. Further, immediately prior to the strike in June 1975, the Employer employed 11 unit employees. According to the eligibility list submitted by the Employer, 12 individuals worked in the unit during the eligibility period in June 1976. Thus, had there not been a strike, Wolek would likely have been recalled sometime before June 9, 1976, in order to do the work done by the twelfth replacement.

As a result, Wolek very clearly had at least a reasonable expectation of recall, if not a certainty thereof at the time of the election in this case. Accordingly, I will overrule the challenge to the ballot cast by Joseph Wolek.

ALLEN VOORIS AND GEORGE STONISH

The Employer contends that Vooris was the foreman in the shop. As such he was in overall charge of the shop and directed the shop workers in all phases of their work. Consequently it argues that he is a supervisor within the meaning of Section 2(11) of the Act and ineligible to vote in a Board election. Vooris was responsible for assigning work to individual employees, for initialing time cards and approving time off from work, for disciplining employees and effectively recommending discharge. The Employer contends that Vooris received premium rates of pay for these responsibilities both weekly and in large annual bonuses. Local 455 contends that Vooris was a working foreman responsible only for direction of iron work skills in the shop and that Vooris was included in Local 455's contract unit and was always considered an employee by the parties to that contract. Local 455 also contends that Richard T. Fanning, one of the Employer's officers and shareholders, was alone responsible for disciplining, hiring and firing, and granting time off for shop workers. Thus, it appears that the evidence obtained in the investigation raises substantial and material issues of fact, including issues of credibility, concerning the eligibility of Allen Vooris, which may best be resolved by a hearing.

The Employer contends that George Stonish was the assistant foreman in the shop in charge of the Employer's "rail department," that he filled in during the absence of Vooris, and was a supervisor within the meaning of the Act.

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The Employer contends that Stonish assigned work in the rail department for which he received premium rates of pay both weekly and in large annual bonuses of a type which only he and Vooris receive in addition to management. Of the eleven or twelve unit employees, anywhere from two to four work in the rail department. The Employer does not contend that Stonish was responsible for time records or for discipline of unit employees, but does contend that he effectively recommended a raise for an employee on one occasion. Local 455 contends that Stonish was included as a lay out man under its contract with the Employer and any direction of work was incidental to the lay out functions of his job. Local 455 contends that Stonish did not responsibly exercise any authority over unit employees because all such authority rested with Richard T. Fanning. Thus, it appears that the evidence obtained in the investigation raises substantial and material issues of fact, including issues of credibility, concerning the eligibility of George Stonish, which may best be resolved at a hearing.

WILLIAM ALESIOUS

Alesius was first employed by the Employer as a draftsman beginning several months before the beginning of the strike. The drafting work was not included in Local 455's bargaining unit and Alesius was not a member of Local 455 prior to the strike. In early July 1975, shortly after the strike began, Alesius was assigned part time to do iron working mechanic's work in the production area of the shop. He continued to spend 40-60% of his time in the drafting room doing his regular work there.

As noted above, a striker replacement is presumed to be permanently employed.^{4/} This presumption arises however, only where the replacement was hired after the onset of the strike. The presumption does not arise where an employee is transferred from a nonunit position to a unit job during an economic strike as a striker replacement.^{5/} In the present case, Alesius has not been transferred to unit work on a full-time basis and retains substantial involvement in his pre-strike, out-of-unit work. Under the ordinary operating conditions of the pre-strike period, Alesius was working full-time in the drafting work alone. It can be anticipated that upon termination of the strike and resumption of the Employer's ordinary operation, the drafting work will again require the draftsman's full-time efforts. Therefore, I find that Alesius' transfer to part-time production work was not a permanent assignment and consequently he was not permanently employed in the unit during the eligibility period here. Accordingly, I shall sustain the challenge to the ballot of William Alesius.

^{4/} Pacific Tile, supra, 137 NLRB at 1360.

^{5/} Id., at 1367.

STUART JACOBSON, MARK JACOBSON, RICHARD W. FANNING, THOMAS FANNING

The Employer here is a corporation, closely held in equal shares by Richard T. Fanning and Lawrence Jacobson. In addition to being the sole holders of voting shares in the Employer, Richard T. Fanning and Lawrence Jacobson are the operating officers of the Employer, engaged in the day-to-day running of the shop. Thomas Fanning, and Richard W. Fanning are the sons of Richard T. Fanning. Thomas Fanning was employed by the Employer during the eligibility period which fell during his vacation from school. He expects to return to school in September, 1976. It is well settled that the child of an individual having a substantial stock interest in a closely held corporation which is the employing entity of the child, will be excluded from any collective bargaining unit organized in that entity.^{6/} Further, an individual employed during his school vacation, who expects to return to school at the close of the vacation, is excluded from any bargaining unit in which he works during the vacation.^{7/} Accordingly, I shall sustain the challenge to the ballot cast by Thomas Fanning.

Richard W. Fanning is the son of Richard T. Fanning. He has recently graduated from college and now plans to work for the Employer for the indefinite future. In accordance with the precedent noted above,^{8/} I will sustain the challenge to the ballot cast by Richard W. Fanning.

Mark Jacobson is the son of Lawrence Jacobson. He was employed by the Employer during the eligibility period which fell during his vacation from school. He is intending to return to school in September 1976.

^{6/} Foam Rubber City #2 of Florida, Inc., 167 NLRB 623, 624 (1967); accord: Missouri Electric Works, Inc., 212 NLRB 124, 124 n. 3 Caravelle Wood Products, Inc., 200 NLRB 855, 856 (1972), enf'd, 504 F.2d 1181, aff'd and reh'g en banc denied, 510 F.2d 257 (7 Cir. 1974); M.J. Pirolli and Sons, Inc., 194 NLRB 241, 249 enf'd (1 Cir. June 7, 1972) 80 LRRM 3170.

^{7/} Pacific Tile, supra, 137 NLRB at 1364-65.

^{8/} Supra, n. 6.

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In accordance with the established Board law,^{9/} I will sustain the challenge to the ballot cast by Mark Jacobson.

Stuart Jacobson is the brother of Lawrence Jacobson. Prior to the strike, Stuart Jacobson was not employed by the Employer. He has been engaged in delivery work for the Employer during the time of the strike. A collateral relative of an employer, unlike a child or spouse, is not excluded from a bargaining unit because of such relationship alone.^{10/} There must be a showing that the collateral relative has a special status in the employing enterprise, which removes him from the ordinary community of interest of the bargaining unit employees, before he will be found to be excluded from the unit. There is no evidence that Stuart Jacobson enjoys any special status with the Employer. The election eligibility list submitted by the Employer, however, did not include the name of Stuart Jacobson nor is there any evidence that Stuart Jacobson, despite his earlier employment by the Employer, was employed during the eligibility period for this election. Further, his omission from the Employer's own summary of the payroll for the eligibility period here leads necessarily to the conclusion that he was not employed by the Employer during the eligibility period. I find that Stuart Jacobson was not employed by the Employer during the eligibility period for this election. Accordingly, I shall sustain the challenge to the ballot cast by Stuart Jacobson.

^{9/} Supra, nn. 6 and 7.

^{10/} Pargas of Crescent City, Inc., 194 NLRB 616, 616 (1971).

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CHALLENGES SUMMARY

I have overruled the challenger to the ballots cast by Richard Bowling, Charles Swaringen, William Wilkes, William Fay, John Klug, Kenneth Jacobsen, Hayri Tansel and Joseph Wolek.

I have sustained the challenges to the ballots cast by William Alesius, Thomas Fanning, Mark Jacobson, and Stuart Jacobson.

Substantial and material issues of fact, best resolved by a hearing, were raised in the investigation of the challenges to the ballots cast by Andrew Molfetta, Allen Vooris, and George Stonish.

However, inasmuch as the opening and counting of the eight ballots to which challenges have been overruled may result in a determinative election, I have directed, infra, that those eight ballots be opened and counted and thereafter that a Revised Tally of Ballots be issued. The scheduling of a hearing if necessary on the three challenges which could not be resolved on the basis of the investigation, shall be deferred pending the issuance of the Revised Tally of Ballots.

OBJECTIONS

Local 819 filed its objections and thereafter was asked to submit its evidence in support of the objections. Certain evidence was adduced in support of several of the objections and it is discussed below. Concerning its Objections No. 4,5,6, and 7, however, Local 819 submitted no evidence in support nor was any adduced in the investigation. Accordingly, I will overrule Objections No. 4,5,6 and 7 filed by Local 819.

The Employer filed one Objection. This was concerned with the amount of time available to the Employer to campaign among the eligible employees. This objection, which deals with the chronology of the proceedings in this case, will be discussed below simultaneously with the similar objection filed by Local 819 as its Objection No. 14.

LOCAL 819's OBJECTIONS NO. 1, 3 & 8

These objections relate to conduct of the Employer ^{11/} alleged to have improperly affected the results of the election. As contended by Local 819 in its Objection No. 1, the Employer failed to include in the Excelsior list the names or addresses of the strikers represented by Local 455. As noted above in the discussion of the challenges to the ballots cast by the strikers, the Employer contended at and prior to the time of the election that the strikers had abandoned the strike, had been terminated prior to the strike, or had been supervisors at the time the strike began. Consequently, all the strikers were considered ineligible by the Employer.

^{11/} The Employer expressly refused to cooperate in the investigation of the objections.

The Employer further contends that under what it construes to be the Board's usual practice, the election in this case would not ordinarily have been scheduled until sometime on or after July 1, 1976. Such a date would have been more than one year after July 1, 1976, when Local 455's strike against the Employer commenced. Thus, the Employer asserts that the strikers who had been permanently replaced would not have been eligible to vote in any July 1976 or later election. Its Excelsior list would then be valid as submitted.

The Excelsior list from the Employer was received by the Regional Office on June 22, 1976, as prescribed in the Regional Director's Decision and Direction of Election in this ^{12/} case. On the day of its receipt from the Employer, June 22nd, the Regional Office mailed copies of the Employer's list to Local 455 and to Local 819. On June 23, Local 455's attorneys mailed a list of the names and addresses of the strikers to the Regional Office. This was received on June 24th and copies were mailed to the Employer and Local 819 on June 25th. Also, on June 24th, the list of strikers' names and addresses was dictated to a secretary in the office of Local 819's attorney by a Board agent. Thus, all parties had the names and addresses of all assertedly eligible voters by about June 24, 1976. Also on June 24, 1976, the Regional Director mailed the official Notice of Election to all parties, setting the election for June 30, 1976. Copies of the Notice of Election were mailed on June 25th to all the individuals named in the lists submitted by the Employer and Local 455.

^{12/} Dated June 15, 1976, at pp. 4-5.

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There was a substantial number of names missing from the Employer's Excelsior list. These missing names were supplied to Local 819 immediately after the Employer's list was submitted. The Board has held that omission of names, as opposed to a complete failure to submit any list, is not per se objection-^{13/}able conduct. Further, Local 819 was supplied with all the strikers' names and addresses immediately after the Employer's list was submitted. Consequently, under all the circumstances here, I overrule Local 819's Objection No. 1.

Local 819's Objection No. 3 asserts that the Employer did not post the official Notice of Election. The evidence submitted by Local 819 tends to show that the Employer did not have the Notice of Election posted on the day of the election. The Board has no fixed requirement for the length of time that a Notice of Election should be posted, and leaves such matters to the informed discretion of the Regional Director in each case.^{14/} In the preparation for the election in this case, the Regional Director on June 25, 1976, sent copies of the official Notice of Election to all the individuals named on the lists submitted by the Employer and Local 455. This was five days before the June 30th election. As a result, all the workers had the opportunity to be informed of the election details. Under these circumstances, the purpose of the Notice of Election has been satisfied and there is no prejudice shown from the lack of posting of the Notice of Election by the Employer. Consequently, I overrule Local 819's Objection No. 3.

^{13/} West Coast Meat Packing Co., Inc., 195 NLRB 37, 37(1972); Telonic Instruments, 173 NLRB 588, 589(1968).

^{14/} Kilgore Corp., 203 NLRB 118, 118(1973).

In its Objection No. 8 Local 819 asserts that a sign reading "no union," and nothing more, was posted within view of the area where the election was held. Local 819's witness states that he believes the sign was posted by Richard T. Fanning's son, but he does not know the name of this individual. The sign simply states the Employer's asserted position of opposition to unionization of his plant. Such a statement is not itself objectionable.^{15/}

Even though the sign may have been visible from the election area, there were no representatives of either the Employer, Local 819 or Local 455 near the polling place during the time the polls were open. The Board has long held that simple "vote no" insignia displayed within the polls is not by itself objectionable.^{16/} Consequently, I overrule Local 819's Objection No. 8.

LOCAL 819's OBJECTIONS NO. 9, 10 and 11

These three objections all relate to the place at which the balloting was conducted on June 30th. Local 819's Objection No. 9 asserts that ballots were cast at a place other than that designated in the Regional Director's "Order." The Notice of Election described the polling place as "Bus parked in front of Employer's premises,"^{17/} with the polls to be open from 9:00 a.m. to 12:00 noon.

The chartered bus was scheduled to arrive at the polling place at 8:00 a.m. on the day of the election. Apparently through inadvertence of the bus charter company or its driver, the bus did not depart from its garage until 8:00 a.m. and arrived at the polling place at about 9:40 a.m.

^{15/} Packerland Packing Co., 185 NLRB 653, 653-54(1970); Showell Poultry Co., 105 NLRB 580, 581-82(1953).

^{16/} Compare, Larkwood Farms, Div. of the Pillsbury Co., 178 NLRB 226, 226(1969), with Macklanbarg-Duncan Co., 179 NLRB 848, 848-49(1969).

^{17/} Shortly before the election was held, the Employer informed the Regional Office that it would not permit the election to be held on its premises, consequently a bus was chartered to house the election.

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The Board agents conducting the election set up the standard Board voting booth at the designated spot on the street in front of the Employer's premises. This was at the closed end of a dead end street, without any through traffic. The polls were opened on time. When the bus finally arrived, it was parked in the designated spot and the booth and participants in the balloting moved into the bus. Although the bus did arrive late, the balloting was conducted at the designated time and place. No confusion among voters as to the correct voting area occurred nor was any alleged. Consequently, I overrule Local 819's Objection No. 9.

In its Objection No. 10, Local 819 asserts that balloting was conducted in the open air in view of union officials among others. Local 819's witness states that the balloting was conducted with the usual, canvas enclosed, voting booth. The witness further states that all union officials stayed a block away from the polling place during the time the polls were open, under instructions of the Board agents conducting the election. There is no allegation or evidence that any representatives of the Employer were anywhere within sight of the area while the polls were open. Consequently, I will overrule Local 819's Objection No. 10.

Local 819 asserts in its Objection No. 11 that the location of the polls led to potential voters' fears for their physical safety because of violence on the picket line and consequently a poor turn-out for the voting. There were twenty-three potential voters included in the two eligibility lists submitted in this case.

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Sixteen voters presented themselves at the polls, and this is in excess of two-thirds of the number of potential voters.^{18/} Accordingly, a representative vote was taken.

Local 819's witness~~es~~ asserted that incidents of rock or bottle throwing at or near the Employer's premises occurred during the strike. Local 819's witness was unable to identify the persons engaging in the rock throwing. There was one occasion when a car driven by a replacement through the picket line at the Employer's plant, was hit by some pickets using golf clubs. Local 819's witness was unsure of the details of the few incidents he named, and they occurred at scattered times during the nearly twelve month long strike involving this plant. Local 819 also points to incidents between Local 455 and another labor organization, not Local 819, which occurred in Queens County, New York, more than 35 miles from the Employer's premises in Suffolk County, New York.

Local 819 does not assert that any arrests or convictions resulted from the claimed incidents of violence. Further, no charges have been filed alleging that Local 455 or anyone else restrained or coerced employees through incidents on the picket line. Finally, there is no evidence that any of the voters who presented themselves at the polls were threatened in any way by whatever pickets may have been present at that time. Consequently, I overrule Local 819's Objection No. 11.

18/ See, Valencia Service Co., 99 NLRB 343, 344(1952)

LOCAL 819's OBJECTIONS NO. 2, 13 and 14, and, EMPLOYER'S OBJECTION

All three of Local 819's Objections No. 2, 13 and 14, and the Employer's objection relate to the effects of the short time between the notification to the parties on June 24, 1976, of the election date of June 30th. The thrust of all these objections is that the parties were not given sufficient time to campaign and that the Board shortened the available time in contravention of its usual practice. There were six days from the June 24th notification until the June 30th election. This is concededly shorter than the twenty-five days or greater period regularly utilized in setting election dates following Regional Directors' Directions of Election. The Board has sanctioned such shortening of the available time in unusual circumstances such as are presented here.^{19/}

The strike by Local 455 commenced on July 1, 1975. The petition in this case was filed by Local 819 on September 26, 1975. After numerous matters, including various unfair labor practice charges which each successively blocked further action in this case, were resolved, the Regional Director's decision directing the election issued on June 15, 1976. In order to avoid disenfranchising nearly one-half of the eligible voters,^{20/} the election was set for June 30, 1976.^{21/}

The petition, although blocked, had been on file for fully nine months at the time of the election.

^{19/} Kingsport Press, Inc., 146 NLRB 260, 261 n.2 and 264-65, aff'd in supp. dec., 146 NLRB 1111, 1114-15 (1964); employer denied order enjoining election, Kingsport Press, Inc. v. McCulloch, 336 F.2d 753 (DC Cir. 1964) (per curiam),

^{20/} Supra, text at p. 4.

^{21/} By telegraphic order of June 30, 1976, the Board denied the request of the Employer and Local 819 to stay the election scheduled for that day.

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All parties were aware of the actions and identities of the others, and the affected employees had numerous opportunities to query all parties. The employees also had ample opportunity to discuss the entire situation among themselves. Further, the shortened period fell on all parties equally. Consequently, I overrule Local 819's Objections No. 2, 13 and 14, and the Employer's Objection.

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Local 819's Objection No. 12.

Local 319 asserts, "on information and belief," that some party made unilateral applications to the Board in Washington, D. C., or to the Regional Office in order improperly to influence the scheduling of the election in this matter. There is no probative evidence from Local 819 in support of this objection. Following the issuance of the Decision and Direction of Election, an election had to be scheduled here as in any such case. This is routinely done administratively by the Regional Director concerned. In the present case, after the decision issued on June 15, 1976, Local 455 advised the Regional Office of the eligibility problem raised by Section 9(c)(3) of the Act. Accordingly, although a request for review of the decision was pending, the election was scheduled for June 30, 1976. The ballots were impounded pending the outcome of the request for review. Section 102.126 and 102.128 of the Board's Rules and Regulations prohibit certain ex parte communications to the decision maker in a pre-election proceeding as is concerned in this objection. It is clear that Local 455's communication to the Regional Office, concerning the election date, occurred after the Regional Director's decision had been issued, and concerned a matter regularly dealt with by the Regional Director administratively. Consequently, I will overrule Local 819's Objection No. 12.

In sum, I have overruled all objections filed by Local 819. I also have overruled the one objection filed by the Employer.

ORDER

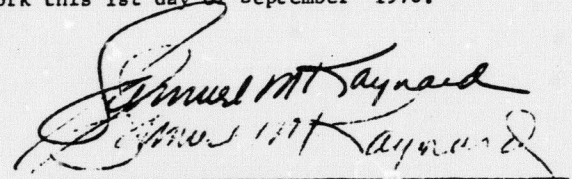
IT IS HEREBY ORDERED that, at a time and place to be subsequently determined by the undersigned, the ballots of Richard Bowling, Charles Svaringen, William Wilkes, William Fay John Klug, Kenneth Jacobson, Hayri Tanxel, and Joseph Wolek be opened and counted, and that a Revised Tally of Ballots be issued in accordance with the findings herein and the results shown upon the count of these ballots.

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RIGHT TO REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this decision may be filed with the Board in Washington, D. C. 20570. This request must be received by the Board in Washington by September 14, 1976.

Dated at Brooklyn, New York this 1st day of September 1976.

A handwritten signature in dark ink, appearing to read "Samuel M. Kaynard", written over a horizontal line.

Samuel M. Kaynard
Regional Director, Region 29
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD: REGION 29

-----x
NORTH SHORE FABRICATORS & ERECTORS, INC.,

Employer,

CASE NO. 29-RC-
3182

-and

LOCAL 819, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

Petitioner.

PETITIONER'S
EXCEPTIONS TO
REGIONAL DIRECTORS
SUPPLEMENTARY
DECISION ON
OBJECTIONS &
CHALLENGED BALLOTS

-----x
This Memorandum is submitted on behalf of the Petitioner herein, Local 819, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA taking exception to the Regional Director's Supplemental Decision on Objections and Challenged Ballots rendered and dated September 1, 1976, hereinafter referred to as the "SUPPLEMENTAL DECISION."

BACKGROUND

Petitioner, Local 819, filed a petition on September 26, 1975 seeking a representation election. Shopmen's Local Union No. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, AFL-CIO intervened on the basis of an alleged contractual relationship with the Employer: A hearing was held before Paulette T. Slavinkas, a Hearing Officer of the NATIONAL LABOR RELATIONS BOARD and on June 15, 1976 the Regional Director rendered a Decision and Direction of Election, hereinafter referred to as the "DECISION".

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On July 1, 1975 Local Union 455 initiated an economic strike against the Employer. The Employer hired permanent replacements for the striking workers.

During the period beginning July 1, 1975, the date Local 455 initiated its strike against the Employer, through the date of the election, June 30, 1976, there were repeated instances of violence and threats directed at those employees who continued to work and which employees were apparently suspected of being sympathetic to Local 819.

On or about June 24, 1976 we received a copy of what was represented to be a list in compliance with the requirements of Excelsior Underwear, Inc., 156 NLRB 1236 (1966) and N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969), hereinafter referred to as the "EXCELSIOR" list.

On June 24, 1976 at about 3:30 p.m. Ms. Slavinskis of the N.L.R.B.'S Region 29 called the office of Robert Jay Dinerstein, Local 819's attorney, and left a message that the Excelsior list as forwarded was incomplete.

Apparently, after being unable to contact Mr. Dinerstein a call was placed directly to Local 819 and a list of names and addresses, allegedly of the strikers, was dictated over the phone to the Petitioner's bookkeeper. Petitioner's bookkeeper was also advised that the election would be held on June 30, 1976 in a bus in front of the Employer's premises

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from 9:00 a.m. to 12:00 a.m. The bookkeeper was further advised that a copy of the Notice of Election could be picked up at the Region's offices on June 25, 1976 otherwise it would be mailed to the Petitioner.

On June 25, 1976 at about 10:A.M. Robert Jay Dinerstein arrived at the Region's offices to question the unusual goings on in this matter. At about 12:20 p.m. Robert Jay Dinerstein was first given a Notice of Election and shortly thereafter he received a sheet of paper entitled "RE: North Shore Fabricators & Erectors, Inc., 29-RC-3182, names of Strikers on payroll as of June 9, 1976."

On June 28, 1976 Robert Jay Dinerstein telegraphed the Region stating that if election was to be held on June 30, 1976, as then scheduled, because of the worker's concern for their safety the election should be held at the Region's offices rather than at the Employer's premises. Concerned that such request might not reach the Region in time to be considered Mr. Dinerstein personally went to the Region and hand delivered a written request that the Region change the location of the election.

The election was held on June 30, 1976, as scheduled at the Employer's premises, but for a portion of the allotted

time ballots were not cast in a bus as called for in the Notice of Election. Only twelve (12) of the twenty three (23) individuals whose names appeared on either the Excelsior List or the Striker's List voted. Four (4) other individuals, whose names did not appear on either list, also cast ballots.

On July 1, 1976 Local 819 filed the following objections to the conduct of the election:

(1) Employer did not supply the required list of eligible employees in that close to fifty percent (50%) of the eligible voters were omitted.

(2) List of eligible voters were not given to Petitioner sufficiently in advance of election.

(3) Employer did not post the notice of election as required.

(4) Employer campaigned against the Petitioner up to and including the time when the election was being conducted.

(5) Employer threatened its employees with the closing of his business if any union won the election.

(6) Campaign literature contained untrue statements.

(7) Campaign literature contained misleading statements and were made at a time when the Petitioner did not have sufficient time to rebut or correct the same.

(8) Election was conducted at a location where each voter had full view of an anti-union sign erected by the Employer.

(9) Board permitted ballots to be cast at a place other than that designated in its own order.

(10) Ballots were cast in the open air so that the balloting was done in full view of each voter, observers and many other union officials who should not have been able to make these observations thereby destroying the secrecy of the ballot.

(11) Board failed to schedule the election at a location which would ensure the voters knowledge of their security in a situation which has been punctuated with violence.

(12) The normal election process was not adhered to when unilateral applications were made to Washington without notice to all parties and without all parties being given an opportunity to be heard.

(13) The Region did not conform to its previous and/or usual rules and regulations in the conduct of the election.

(14) The Region did not give sufficient and timely notice of the election.

On September 1, 1976 the Regional Director rendered a Supplemental Decision On Objections and Challenged Ballots overruling all of Local 819's objections and it is from said decision that Local 819 takes exception.

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POINT I

SUFFICIENT EVIDENCE WAS SUBMITTED IN
SUPPORT OF OBJECTIONS "4" "5" "6" & "7" TO
WARRANT THE SUSTAINING OF SAID OBJECTIONS AND
THE SETTING ASIDE OF THE ELECTIONS

The essence of Objections "4", "5", "6" and "7" is that the Employer engaged in wrongful pre-election conduct which interfered with the employees freedom of choice to such an extent that the election should be set aside. The measure of what is wrongful conduct which constitutes interference was succinctly set forth by the Board in Metropolitan Life Insurance Co. (90 NLRB 935 (1950), 26 LRRM 1294) where it was held that in determining whether there has been interference with an election the test is not one of the Employer's good faith or whether the challenged conduct is shocking but only whether an atmosphere that was incompatible with freedom of choice was created.

In the instant case Local 819 relies on two (2) letters sent by the Employer on the Employer's letterhead in alleging that the Employer's pre-election conduct were so wrongful so as to have interfered with the conduct of the election.

To reinforce in the voter's minds its threat to close the business if it did not prevail upon the election, the Employer posted a sign "No Union" in the immediate area of the balloting and in full view of any employee who went to cast a ballot.

Of course Local 819 has no way of knowing what other similar wrongful conduct the Employer engaged in which was not brought to Local 819's attention. Apparently the Regional Director has deemed that two (2) letters appended to an affirmation which was submitted on behalf of Local 819 or the picture of the sign do not constitute evidence in support of these objections.

Inasmuch as the affirmant was assured of the confidentiality of his affirmation, except in the event he be called upon to testify, a copy of his affirmation is appended hereto as Exhibit A, and the letters appended thereto as Exhibits A-1 and A-2 respectively, so that the Board will be aware of which affirmation is referred to while only a copy of the letters in question will be served upon the intervenor so as not to unnecessarily identify the affirmant.

Exhibit A-1, the letter addressed to "TO ALL OUR PRESENT AND HOPEFULLY FUTURE WORKERS" implicitly threatens the employees that if the employees vote for either union the Employer would close its business, at the same time that the

letter makes material misrepresentations and untrue statements. Just in case the employees did not get the message the Employer also sent the letter appended hereto as Exhibit A-2 and cavalierly enclosed therewith a key blank, a copy of which has been reproduced on the exhibit. If the decided Board cases are not to be ignored, the letters in and of themselves constitute sufficient interference to have effected the employee's freedom of choice and warranting the setting aside of the election.

It has been held time and again by both the Courts and the Board that pre-election letters to employees conveying threats that the Employer would go out of business if the Union won interfered with the employee's freedom of choice, NLRB v. Clearfield Cheese Co., Inc., CA3 (1963), 54 LRRM 2096; enf. 51 LRRM 1275. In the case of NLRB v. Realist (CA 7 (1964), 55 LRRM 2523; enf. 53 LRRM 1100) the Court held that intimations calculated to create fear in the minds of the employees that their jobs were in jeopardy coupled with remarks conveying the idea that it would be futile to join the Union constituted interference warranting remedial action. In this regard also see Utica-Herbrand Tool, Div. of Kelsey-Hayes Co., 145 NLRB 1717 (1964), 55 LRRM 1223; Ely and Walker 151 NLRB 72 (1965), 58 LRRM 1513; Ideal Baking

Co. of Tennessee Inc., 143 NLRB 546 (1963) 53 LRRM 1270;
Lake Catherine Footwear Inc., 133 NLRB 443 (1961), 48 LRRM
1683; Myrna Mills Inc. 133 NLRB 767 (1961), 48 LRRM 1707;
Stockline Corp., 142 NLRB 875 (1963) 53 LRRM 1160; McLaughlin
Co. 187 NLRB 131 (1971) 76 LRRM 1317; American Electro
Finishing Co. Inc. 212 NLRB 95 (1974), 86 LRRM 1626; Detroit
Plastic Mldg. Co. 213 NLRB 120 (1974) 87 LRRM 1759.

Assuming arguendo that the foregoing is not sufficient,
in and of itself, to warrant sustaining objections "4", "5",
"6" and "7" the Board's attention is respectfully called to
the fact that statements constituting a material misre-
presentation of the facts by one in a position to know the
true facts, where such statements would not have been made
if it had not been believed that the statements would influence
the vote, and there was not adequate time for rebuttal,
constitute interference warranting the setting aside of the
election, Celanese Corp. of America v. NLRB CA7 (1961), 48
LRRM 2406; on remand from 47 LRRM 2604 (cert den 49 LRRM
2173. In Hollywood Ceramics Co. Inc. (140 NLRB 221 (1962),
51 LRRM 1600), the Board went even further holding that a
representation election should be set aside where there has
been misrepresentation or other trickery involving substantial
departure from the truth at a time that prevents another
party from making an effective reply, whether or not deliberate,
and where the wrongful action may reasonably be expected to

have a significant impact on the election.

In the instant matter, as set forth in the appended affirmation (Exhibit A) the letters were first received just before the election. Clearly the Petitioner did not have any time to make an effective reply to the statements contained therein which were untrue and/or misleading. The Employer knew or reasonably should have known that the statement "A " vote for the Teamstes is a vote for monthly dues that can be as high as \$20.00 and even more ..." was misleading and that such a statement, at a time when workers are feeling the effects of the recessicn coupled with inflation, would have a significant impact on the election not to mention the effect that the statement "A vote for the Ironworkers can be a vote for reduction in wages of 22% ..." would have on the employees. On point is the case of Steel Equipment Co. (140 NLRB 1158 (1963), 52 LRRM 1192) where the Board held that an Employer's statements in a leaflet received by employees a day or two before the election warrants setting aside the election where the statements contained a substantial departure from the truth. (Also see Bausch and Lomb, Inc. CA 2 (1971), (enf 76 LRRM 1704) 78 LRRM 2648; Tunica Mfg. Co. Inc. 182 NLRB 141 (1970), 76 LRRM 1535; Cross Baking Co. Inc. CA 5 (1971) (sett'g aside 77 LRRM 1753) 78 LRRM 3059; Winchell Process Corp., CA 9 (1971)

(den enf 74 LRRM 1656) 78 LRRM 2929; United States Gypsum Co., 130 NLRB 901 (1961), 47 LRRM 1436.

POINT II

THE REGION'S FAILURE TO SUPPLY LOCAL 819
WITH A TIMELY AND PROPER EXCELSIOR LIST MUST
RESULT IN THE SETTING ASIDE OF THE ELECTION

The entire situation surrounding the Excelsior List in this matter is peculiar and the Employer's conduct as well as the Board's conduct must be suspect. The Employer submitted the alleged Excelsior List on June 22, 1976 on which date the list was mailed to the Petitioner and the Intervenor. The Employer however neglected to include in such list the employees who were on strike, (Supplementary Decision, P. 14), as well as two (2) employees still employed by the Employer, namely Normal Fagan and Salabid Din Abdu Rohim. The Employer justifies the omission of the strikers from the Excelsior List on the basis that if the Board followed its usual practice the election would not have been held until after July 1, 1976 and the strikers would not have been eligible to vote (Supplementary Decision, P. 14). The Regional Director accepts this argument notwithstanding the fact that in his Decision of June 15, 1976 the Regional

Director, citing Excelsior Underwear, Inc. (Supra) and NLRB v. Wyman Gordon Company (Supra) directs that those eligible to vote:

"... are those in the unit who were employed during the payroll period ending immediately preceding the date of this decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period and their replacements." (Supplementary Affirmation, pp. 3-4).

Clearly in submitting the Excelsior List on June 22, 1976, the Employer, pursuant to the foregoing should have included the strikers and thereafter challenged them at the election if their eligibility expired. An Excelsior List may not be used as a vehicle to dispute the eligibility of certain employees by omission or inclusion (Ponce Television Corp., 122 NLRB 20 (1971), 77 LRRM 1622).

The Employer further justifies the omission of the strikers from the Excelsior List on the basis that all of the strikers were considered ineligible on the basis that the strike had been abandoned, the strikers had been terminated prior to the strike or that the strikers were supervisors when the strike began. The transparency of these arguments did not escape the Regional Director in deciding the objections but he, the Regional Director, nonetheless accepted the arguments as valid in determining the propriety of the

Excelsior List.

In the late afternoon on June 24th, as previously set forth, the Petitioner's office was called and a list of names and addresses, allegedly of the strikers, was dictated to the Petitioner's bookkeeper and the bookkeeper was advised that the election was scheduled for June 30, 1976. A copy of the list as transcribed by the bookkeeper is appended hereto as Exhibit B. On June 25th a written copy of the Strikers List and a notice of election were given to the Petitioner, through its counsel Robert Jay Dinerstein, for the first time, when he went to the Region's offices. Subsequently copies of the Strikers List were received in the mail by the Petitioner and its counsel.

The Regional Director totally ignores the fact that the Employer unexplainedly also failed to include the names of two (2) employees who were not strikers, despite the fact that this point was raised in Robert Jay Dinerstein's letter of July 24, 1976 which was submitted in response to the Board Agent's request for an amplification of the objections.

The decided Board case law is clear in holding virtually unequivocally that the Employer's failure to provide a proper Excelsior List is grounds for the setting aside of the election. In Swift and Co., Inc. (64 LRRM 1241 (1967)), the Board held that even assuming the availability of other avenues through which the Union might be able to reach the

employees the Board may properly require the Employer to provide an Excelsior List to insure the opportunity of all employees to be reached by all parties. In Excelsior Underwear, Inc. (Supra) the Board held that access to the names and addresses is essential to a free, fair and informed election which principal is restated by the Court in NLRB v. Wyman-Gordon Co. (Supra) holding that the list provides a reasonable means of assuring contending parties fair access to the voters. The Employer's blatant and unjustifiable failure to supply a proper Excelsior List deprived the Petitioner of fair access to the voters thereby depriving the employees of the free, fair and informed election to which they were entitled, giving an advantage of time to the Intervenor who had the names and address of the strikers, and who indeed supplied that information to the Region.

While the Board has held that there is "nothing in Excelsior which would require the rule stated to be mechanically applied" (Telonic Instruments, 173 NLRB 588) the fact remains that in every case which bears the slightest resemblance to this matter the Board has held that the Employer's failure to supply a proper Excelsior List warranted the setting aside of the election. In this regard see Martin Outdoor Advertising Co., 198 NLRB 15 (1972) 81 LRRM 1405; American Petrofine Co. of Texas 203 NLRB 158 (1973), 83 LRRM 1252;

Sonfarrel Inc. 188 NLRB 146 (1971), 76 LRRM 1492; Ponce Television Corp., (Supra); Crane Packing Co., 62 LRRM 1398; British Auto Parts Inc., 62 LRRM 1591; Northern Metal Products Co., 63 LRRM 1478 (1966); Swife and Co., 66 LRRM 2039 (1967).

POINT III
THE REGIONAL DIRECTOR'S DIRECTION OF THE
 ELECTION TO BE HELD JUNE 30, 1976 WAS WRONGFUL
 AND THE ELECTION SHOULD BE SET ASIDE

The Petitioner, as previously set forth, was first advised by telephone late in the afternoon on June 24, 1976 that the Regional Director directed that the election in the captioned matter be held on June 30, 1976, some six (6) days thereafter. While admitting that "this was concededly shorter that (sic) the twenty-five days or greater period regularly utilized in setting election dates following Regional Director's Directions of Election" (Supplementary Decision, p. 19), the Regional Director fails to deal with the fact that such order was in direct contravention of the Board's Field Manual.

Section 11302.1 of the National Labor Relations Board Field Manual specifically provides that "An election may not be held sooner than ten (10) days after the Regional Director has received the list of names and addresses of eligible voters." Whether one calculates from June 22nd, the date

the Regional Director received the Excelsior List, or from June 24th, the date that the Regional Director in fact first had the names and addresses of the eligible voters, having then first received the Strikers List, less than ten (10) days elapsed before June 30, 1976.

The decided Board case law clearly and unequivocally holds that when the Board and/or the Union does not timely receive a proper Excelsior List the election will be set aside. (See Brunswick Corp. 206 NLRB 64 (1973), 84 LRRM 1338; Rockwell Mfg. Co. 82 LRRM 1190 (1972). The Board, in Coca-Cola Co. (202 NLRB 123 (1973), 82 LRRM 1724) even set aside an election where the Union's failure to obtain the list on time was as a result of the misaddressing of the envelope by the Regional Director's office.

The case of Program Aids Co., Inc. (65 LRRM 1244 (1967)) is one of the rare instances where the Board did not set aside an election despite the fact that the submission of the Excelsior List was untimely. In that case the Board specifically emphasizes that despite the untimely submission of the list the Union had the list for ten (10) days prior to the election. In contrast to Program Aids (Supra) in the instant case the Petitioner, at best, only had the complete list five (5) days before the election. A case which is very similar to the instant case is Chemical Technology Inc., 87 LRRM 1626 (1974). In Chemical Technology the Board

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held that receipt of an Excelsior List. in that instance a second Excelsior List, only six (6) days before the election gave the Union insufficient time and did not rebut the presumption of prejudice to the Union's opportunity for access to employees.

In support of his decision, the Regional Director cites Kingsport Press Inc. (146 NLRB 260, 261 n. 2 and 264-65, aff'd in supp. dec., 146 NLRB 1111, 1114-15 (1964), 55 LRRM 1290; den enf, Kingsport Press Inc. v. McCulloek, 336 F2d 753 (DC Cir. 1964) despite the fact that the case is clearly inapplicable, the only similarity being the fact that strikers may be disenfranchised. In the Kingsport cases it was held that the time for filing of briefs would be extended until after the election and the briefs could be treated as a motion for reconsideration. This was simply a procedural maneuver which would not prejudice anyone's rights. In this case the untimely holding of the election deprived the Union of fair access to the voters (NLRB v. Wyman-Gordon, (Supra) and of the opportunity to reach all employees which is essential to a free, fair and informed election (Excelsior Underwear Inc., Supra). It should not be overlooked that the delay in holding this election was solely a result of the Intervenor's failing of changes which were found to be without merit. The Petitioner in no way sought nor contributed to the delay.

The Regional Director erroneously states that the shortened period fell on all parties equally (Supplementary Affirmation, p. 20). The transcript of the hearing in this matter, at Page 108, will clearly reflect that the Intervenor had the names and addresses of all of the employees at that time (February 1976) whereas the Petitioner herein did not have the names and addresses of the allegedly eligible voters until June 24, 1976 at the earliest. This fact clearly establishes that the Intervenor had unfair access to the employees. Furthermore, the Regional Director's observation that the employees had ample opportunity to discuss the entire situation among themselves, (Supplementary Decision, p. 20), is unwarranted as well as irrelevant. It is well settled that the contenders are entitled to access to the voters by way of the Excelsior List regardless of the fact that other avenues of access may exist (Swift and Co., Inc., Supra). The obvious intent of the Excelsior rule was to assure the Union access to the voters to disseminate its position, a function which can hardly be presumed to be satisfied by intracommunication between the voters. The Regional Director also neglects to set forth any basis upon which he presumes that such intracommunication took place or has it become the Petitioner's burden to establish that it did not take place.

POINT IVTHE VIOLENCE AND THREATS
WHICH PERMEATED THIS SITUATION
PRECLUDED THE HOLDING A FAIR ELECTION

As objection 11 the Petitioner argued that the location of the poll led to fear by the voters for their physical safety and resulted in many voters not appearing at the election. In his Supplementary Decision the Regional Director held that a representative vote was taken in that there were twenty three (23) potential voters and sixteen (16) voters presented themselves at the polls (Supplementary Decision, pp 17-18).

In reaching his decision the Regional Director completely ignores the fact that four (4) of the sixteen voters who voted were not amongst those named on either of the Excelsior Lists and that he, the Regional Director, in fact found four (4) voters whose names did not appear on the lists to be ineligible by reason of the fact that they were principals and/or relatives of principals of the Employer (Supplementary Decision pp 10-11). Of the remaining twelve (12) individuals who cast ballots only one was not a Local 455 striker.

Both of the affirmations submitted on behalf of Local 819 attest to the fact that violence existed throughout the strike both at the Employer's premises and elsewhere. The

Regional Director acknowledges in his decision that he was aware of allegations that violence permeated the situation however appears to rely heavily upon the fact that no arrests or convictions resulted. Are arrests and/or convictions the only acceptable evidence that the incidents complained of took place or that they affected the employee's right to a free and fair election.

In the affirmation appended hereto the employee admits that the situation became so intolerable that he was afraid to go to work and that he found it necessary to sneak into the plant to avoid the picketers. The affirmant further admits that he did not vote out of fear for his health and safety. These allegations cannot simply be brushed aside. An atmosphere of fear is sufficient to constitute interference with an election and warrant the setting aside of the election (James Lees & Sons, Co. 130 NLRB 290 (1961), 47 LRRM 1285) It is also well settled that where an employee is threatened with reprisals if they didn't vote a particular way the election process had been interfered with and the election should be set aside (Sunoco of Puerto Rico, Inc., 210 NRRB 72 (1974) 86 LRRM 1122) (also see Sunoes Prod Co., CA 9 (1971) (den enf and remaing 72 LRRM 1417), 77 LRRM 2589; Raytheon Co. 188 NLRB 42 (1971), 76 LRRM 1287;

Tampa Crown Distributors, Inc., CA 5 (1959), 45 LRRM 2109 (enf den 43 LRRM 1035); Provincial House, Inc. 209 NLRB 24 (1974), 85 LRRM 1326.

The Board has even set an election aside on the basis of violence and repeated threats despite a claim by the Union that the conduct was intended to maintain the picket line and not to influence the election notwithstanding the fact that the misconduct stopped thirty (30) days before the election (Blanko, Ciervo, Inc. 211 NLRB 51 (1974), 86 LRRM 1452.

The Court has held that in proceeding to determine the effect of a union's tactics on the employee's votes the effect may be evaluated without direct evidence by employees that they were affected by such tactics (Tyler Pipe Industries Inc., CA 5 (1971), (den enf 76 LRRM 1830), 77 LRRM 2416.

Certainly the fact that the only ones who voted were Local 455 strikers and management, with only one exception, must stir one's curiosity and raise questions which simply cannot be ignored.

Immediately upon learning of the Region's intent to hold the election at the Employer's premises the Petitioner, by its counsel, both by telegram and hand delivered hand written letter, appealed to the Region to hold the election

at the Region's offices. The Petitioner advised the Region that many of the employees were concerned for their safety should the election be held at the Employer's premises and that employees had advised the Petitioner that without assurances of adequate protection they were afraid to vote. The Region refused the request and the election was held at the Employer's premises without any measures taken to assuage the Employee's fears. One cannot overlook the possible and it is submitted probable, causal relationship between the violence threats and place of election and the fact that with the exception of one employee and four management employees, only Local 455 strikers cast ballots.

POINT V

THE ELECTION WAS TAINTED
BY REASON OF THE INTERVENOR'S
UNAUTHORIZED COMMUNICATIONS

The Petitioner raised further objection to the election on the basis that it was believed that some party made unilateral applications to the Board or to the Regional Office in order to improperly influence the scheduling of the election in this matter. The Regional Director states there is no probative evidence from the Petitioner in support thereof (Supplementary Decision, p. 21). Needless to say one would be hard pressed to supply what would be considered

probative evidence of such allegations when the Petitioner was not served with any documentation relative thereto nor has the Region allowed the Petitioner access to the Region's file.

Notwithstanding the foregoing the Regional Director admits that the Intervenor had communicated with the Regional Office concerning the election date after the Decision was issued (Supplementary Decision, p. 21) and that the communication concerned a matter regularly dealt with by the Regional Director administratively, to wit: the setting of the date of the election. Despite his acknowledgement that Sections 102.126 and 102.128 of the Board's Rules and Regulations prohibit ex parte communications to the decision maker the Regional Director saw fit to ignore this blatant impropriety and summarily overruled this objection.

The obvious and clear intent of the cited rules is to preclude the decision maker from being influenced in reaching a decision without giving all parties an opportunity to be heard. While stating that the communication "concerned a matter regularly dealt with by the Regional Director administratively" the Regional Director admits that the period between the Decision and the date the election was noticed to be held was "concededly shorter than (sic) the twenty five days or greater period regularly utilized in setting election dates following Regional Directors' Directions of Election" (Supplementary Decision, p. 19) and

does not deny that he, the Regional Director, was influenced in setting the date of the election by the ex parte application of Local 455. The Petitioner had absolutely no notice of the Intervenor's application until after the Notice of Election issued and then Petitioner only heard rumors that the Intervenor brought pressure to bear to influence when the election would be held.

The Regional Director, or Washington, having heard the Intervenor's pleas regarding the election date without giving the Petitioner an equal chance to be heard violated the spirit if not the letter of the rules prohibiting ex parte communications. Clearly the setting of the election date lost its "administrative" status as soon as the manner in which it was usually administratively handled was interfered with by any ex parte communication. It is respectfully submitted that if the Regional Director did anything more than totally ignore the communication the Petitioner was entitled to an opportunity to be heard and to plead its case.

POINT VI

THE PRE-ELECTION CONDUCT
PRECLUDED THE HOLDING OF
A FREE AND FAIR ELECTION

The Regional Director in his Supplementary Decision determined that the Employer's failure to post the Notice of

Election as required was not significant in light of the fact that the Region mailed out Notices to the employees. In Special Machine & Engineering Co., (85 NLRB 1332 (1949) 24 LRRM 1564) however the Board held that the Employer's failure to post the Notice of Election coupled with an improper Excelsior list was sufficient misconduct to warrant remedial action.

Furthermore, preelection activities which create a general atmosphere of fear and confusion constitute interference with the election and the election should be set aside even though the fear and disorder may have been created by individual employees or non-employees whose conduct can not be attributed to either the Employer or the Intervenor (Diamond State Poultry Co., Inc., 107 NLRB 3 (1953), 33 LRRM 1043). In the instant case the employees who were not Local 455 strikers were subjected to threats from the Employer that they would lose their jobs if they supported a Union at the same time they witnessed and experienced the violence and were threatened that there would be reprisals.

The effect of the foregoing upon the non-Local 455 employees is clear, they simply did not vote. As previously set forth while all of the Local 455 strikers voted only one (1) of the twelve (12) individuals whose names appeared on the Excelsior List, and whose position in this representation proceeding was presumably unknown, cast a ballot. It would

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be unconscionable under the circumstances to describe those who cast ballots as representative of those eligible to vote and the failure of the remaining eligible voters to participate is understandable in view of the atmosphere created by the Intervenor and the Employer. The remaining employees were simply not given an adequate opportunity to vote.

An employees "opportunity to vote" cannot be narrowly measured by the date an election is to be held or the amount of time allowed for balloting but must also consider the tangential factors which could influence, and in this case did influence, the election.

It is well settled that conduct which creates an atmosphere which renders improbable a free choice in an election constitutes sufficient grounds to set the election aside notwithstanding the fact that such conduct may not constitute an unfair labor practice (General Shoe Corp 77 NLRB 124 (1948) 21 LRRM 1337). Even assuming that each component part of the wrongful acts complained of, viewed separately, falls short of constituting interference, if the conduct complained of, as a whole, were calculated to wrongfully influence the election the election should be set aside (General Industries Electronics Co., 146 NLRB 1139 (1964) 56 LRRM 1015. While it is said that "Justice is Blind" the intent was that justice would not be influenced by seeing and/or recognizing the parties before the bar of justice and not that Justice should close its eyes to the

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obvious.

CONCLUSION

The election was interefered with and should be set aside on the grounds that a free and fair election did not take place.

Robert Jay Dinerstein
Attorney for Petitioner
26 Court Street
Brooklyn, New York 11242

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD; REGION 29
-----X
NORTH SHORE FABRICATORS & ERECTORS, INC.,

Employer,

CASE #29-RC-
3182
AFFIRMATION

and

LOCAL 819, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Petitioner.

-----X
ROBERT LAUREANO does hereby affirm under penalty of
perjury:

(1) I am an employee of the above named Employer and am giving this affirmation on the basis of assurances received from my attorney that the National Labor Relations Board, Region 29, has represented that this statement will be kept confidential, and the contents thereof will not be disclosed until such time as I may be called upon to testify at a hearing in this matter.

(2) I reside at 12-02 Tyse Avenue, Bronx, New York.

(3) For about the last seven (7) months, I have been aware that organizational activities have taken place with respect to my Employer.

(4) I have been advised that since the time that Local 455 went on strike a Teamster Local No. 819 has attempted to represent the Employer.

(5) Since the dispute between Local 455 and Local 819 began I have received numerous threats when I would go to work from people who are manning the picket line and who claimed to represent the interests of Local 455. The

(6) During this period, I also received numerous phone calls both at home and at the factory threatening me with physical harm should I continue to work and also threatening reprisals to the company for allowing me to work.

(7) I witnessed numerous incidents during this period which included Local 455 picketers attacking vehicles entering the Employer's premises and Local 455 picketers throwing rocks and other materials at cars which crossed the picket line. I was personally involved in one (1) incident when I was travelling home from work in one of the other employee's cars, with some of the other men, when a car transporting men we recognized as 455 picketers chased our vehicle and tried to run our car off the road.

(8) The threats and acts I witnessed instilled such fear in me that I felt it was unsafe to continue working and my fellow workers confessed similar fear and expressed the belief that Local 455 was trying to win by force.

(9) Things got so bad that I, along with some of the other men, used to sneak into the plant so that we would not be seen by the picketers.

(10) The day before the election, I received at my home two (2) letters from the company one of which was accompanied by a key blank, copies of which are appended hereto.

(11) While I had heard rumors that an election had been scheduled, it wasn't until two (2) or three (3) days before the election that I had actual knowledge that an election had been scheduled. I had no observed any notice of the election posted at the company's premises.

(12) When I realized that an election was in fact to be held I immediately inquired as to what protection would be afforded those of us who wished to vote who had, by working during the strike, antagonized the Local 455 picketers.

(13) When I learned that the election was to be held at the Employer's premises and that no protection was to be afforded, I advised the Employer of the fact that I was afraid to vote and that I would not vote unless my safety could be assured.

(14) I did not vote in the election because I was told that no provision would be made to secure my safety and I was concerned for my safety because of the repeated threats and violence.

This affirmation was prepared at the request of Local 819 and with the assistance of their attorneys. I have read this affirmation and it is true and correct.

ROBERT LAUREANO

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NORTH SHORE IRON WORKS, Inc.

ENGINEERS - FABRICATORS - ERECTORS

MISCELLANEOUS AND ORNAMENTAL IRON WORK

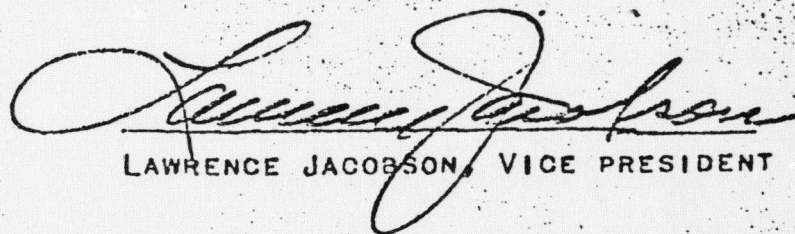
STRUCTURAL STEEL

STEEL STAIR SPECIALISTS

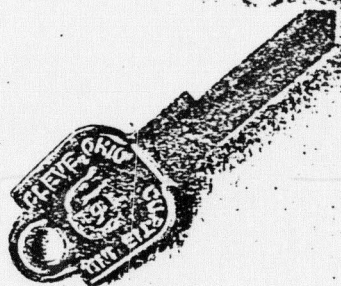
CHESTNUT AVENUE, RONKONKOMA, N. Y.

JU 8-0220

THE ELECTION IS THE KEY THAT CAN CLOSE OR
OPEN OUR DOORS. THAT KEY IS IN YOUR HANDS.



LAWRENCE JACOBSON, VICE PRESIDENT



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NORTH SHORE IRON WORKS, Inc.

ENGINEERS - FABRICATORS - ERECTORS
MISCELLANEOUS AND ORNAMENTAL IRON WORK
STRUCTURAL STEEL STEEL STAIR SPECIALISTS

CHESTNUT AVENUE, RONKONKOMA, N. Y.

JU 8-0220

TO ALL OUR PRESENT AND HOPEFULLY FUTURE WORKERS:

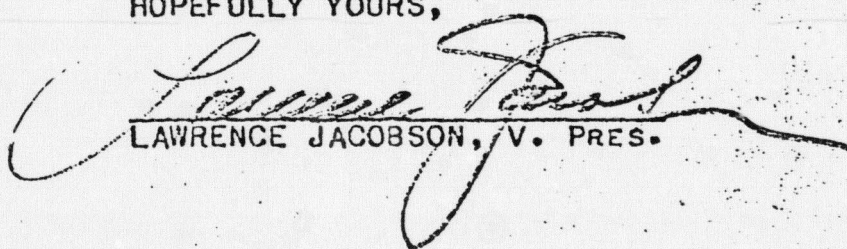
DID YOU KNOW THAT:

1. A VOTE FOR THE TEAMSTERS IS A VOTE FOR MONTHLY DUES THAT CAN BE AS HIGH AS \$20.00 AND EVEN MORE...
2. A VOTE FOR THE IRONWORKERS CAN BE A VOTE FOR REDUCTION IN WAGES OF 22%...
3. A VOTE FOR EITHER CAN CAUSE THE EMPLOYER TO RETHINK ITS POSITION ON THE CONTINUATION OF ITS PRESENT OPERATION...

AND

4. A VOTE FOR NEITHER CAN INSURE YOUR FUTURE AND THE CONTINUATION OF THE FIRM.

HOPEFULLY YOURS,


LAWRENCE JACOBSON, V. PRES.



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Local No. 819

Affiliated with
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers
200 PARK AVENUE SOUTH
NEW YORK, N.Y. 10003

RICHARD SCALZA, President

Phone AL-4-7424-5-6

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June 24th, 1976

Mr. Robert J. Dinerstein
71 So. Central Avenue
Valley Stream, N.Y. 11580

Dear Mr. Dinerstein:

I, May Millman - Bookkeeper for Local 819 I.B. of T., Located 200 Park Avenue South, New York, N.Y. #10003, received a telephone call on June 24th, 1976 approximately 4:15 PM from Ms. Paulette Stavinskas, N.L.R.B., 16 Court Street, Brooklyn, N.Y., Re: NORTH SHORE IRON WORKS.

The following information: Election Wednesday June 30th, 1976 from 9:00 AM to 12:00 AM in a Bus in front of the employer's premises. Ballots will be impounded. Notice of election is available for you to pick up tomorrow Friday, June 25th, 1976 otherwise it will be mailed to you.

These were the strikers:

Allan Vooris
281 Woodlawn Ave.
Ronkonkoma, N.Y. 11779

George Stonish
25 Mac Arthur Blvd.
Hauptauge, N.Y. 11787

Hayri Fancel
655 Taylor Ave.
E. Patchogue, N.Y.

Richard Bowling
2723 Locust Ave.
Ronkonkoma, N.Y. 11779

John Klug
62 Yaphank Ave.
Yaphank, N.Y. 11980

William Fay
35 Bay Avenue
Ronkonkoma, N.Y. 11779

Kenneth Jacobson
587 Johnson Ave.
Ronkonkoma, N.Y. 11779

Charles Swaringen
248 Ferry Road
Smithtown, N.Y. 11787

Joseph Woleck
49 Ratanwood St.
Central Islip
N.Y. 11722

Andrew Molfetta
8 Kneutz Lane
Holtsville,
N.Y. 11742

William Wilken
347 Mc Connell Ave.
Bay Park, N.Y.
11705

Very Truly Yours,

May Millman
Local 819 I.B. of T.
200 Park Avenue South
New York, N.Y. 10003

MM/rm.

NO such town

Blvd. So. in Hauptauge

no such street in Central Islip - try East Islip

no such town

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W

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

NORTHSHORE FABRICATORS AND ERECTORS, INC.

and

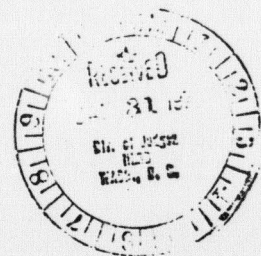
CASE NO. 29-CA-5396

SHOPMEN'S LOCAL UNION 455, INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRONWORKERS, AFL-CIO

COMPLAINT AND NOTICE OF HEARING

It having been charged by Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, herein called Local 455, that Northshore Fabricators and Erectors, Inc., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 29, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by Local 455 on January 4, 1977, and served by registered mail upon Respondent on or about January 4, 1977.
2. Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.
3. At all times material herein Respondent has maintained its principal office and place of business at 2616 Chestnut Street, Ronkonkoma, County of Suffolk, State of New York, herein called the Ronkonkoma plant, where it is, and has been at all times material herein, engaged in the shop fabrication and job site erection of steel and ornamental metal products.



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4. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its Ronkonkoma plant, iron, steel, and related products, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its Ronkonkoma plant in interstate commerce directly from states of the United States other than the state in which it is located and which were transported and delivered to it, and received from, other enterprises located in the State of New York, each of which other enterprises had received the said goods and materials in interstate commerce directly from states of the United States other than the state in which it is located.

5. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. Local 455 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

7. All production and maintenance employees of Respondent employed at its Ronkonkoma plant, exclusive of all erectors, office clerical employees, guards and supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

8. On or about June 30, 1976, a majority of the employees of Respondent, in the unit described above in paragraph 7, by a secret election conducted under the supervision of the Regional Director for Region 29 of the National Labor Relations Board, designated and selected Local 455 as their representative for the purposes of collective bargaining with Respondent, and on or about December 7, 1976, said Regional Director certified Local 455 as the exclusive collective bargaining representative of the employees in said unit, and at all times since said date, Local 455, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining.

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9. On or about November 29, 1976, and continuously since on or about December 10, 1976, through January 6, 1977, Local 455 requested Respondent to recognize it as the exclusive collective bargaining representative of Respondent's employees in the unit described above in paragraph 7, and requested Respondent to bargain collectively with it as the exclusive collective bargaining representative of Respondent's employees in the unit described above in paragraph 7, with respect to rates of pay, wages, hours of employment and other terms and conditions of employment of such employees.

10. Since on or about November 29, 1976, Respondent has refused, and since said date has continued to refuse, to recognize or bargain collectively with Local 455 as the exclusive collective bargaining representative of Respondent's employees in the unit described above in paragraph 7.

11. By the acts described above in paragraph 10, and by each of said acts, Respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

12. By the acts described above in paragraph 10, and by each of said acts, Respondent refused to bargain collectively and is refusing to bargain collectively with the representative of its employees, and thereby engaged in, and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

13. The acts of Respondent, described above in paragraph 10, occurring in connection with the operations of Respondent, described above in paragraphs 2 through 5, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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PLEASE TAKE NOTICE that on the 12th day of April, 1977 at 10:00 a.m., at 16 Court Street, Fourth Floor, in the Borough of Brooklyn, in the City and State of New York and consecutive days thereafter until concluded, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures In Formal Hearings Held Before The National Labor Relations Board In Unfair Labor Practice Cases, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so all the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 23th day of January, 1977.

Harold L. Richman
Harold L. Richman
Acting Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

-----x
NORTHSHORE FABRICATORS AND ERECTORS, INC. x

and x

SHOPMEN'S LOCAL UNION 455, INTERNATIONAL x
ASSOCIATION OF BRIDGE, STRUCTURAL AND x
ORNAMENTAL IRONWORKERS, AFL-CIO x
-----x

CASE NO.

29-CA-5396

FILE IN
FORMAL FILE
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ANSWER

Respondent, Northshore Fabricators and Erectors, Inc.
by its attorneys Gutterman & Pollack, hereby interpose the
following Answer to the Complaint.

1. Denies each and every allegation of the Complaint
contained in paragraphs 8, 9, 11, 12, and 13.

WHEREFORE, having fully answered this complaint Respondent
NORTHSHORE FABRICATORS AND ERECTORS, INC. respectfully
requests that the complaint be dismissed in its entirety.

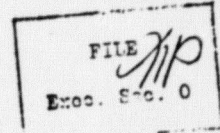
Respectfully submitted,

S/
SARFORD E. POLLACK
GUTTERMAN & POLLACK
Attorney for Respondent

71 South Central Avenue
Valley Stream, New York

DATED: VALLEY STREAM, NEW YORK
February 1, 1977

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

NORTHSHORE FABRICATORS AND ERECTORS, INC.

and

CASE NO. 29-CA-5396

SHOPMEN'S LOCAL UNION 455, INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRONWORKERS, AFL-CIO

MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that the undersigned Counsel for the General Counsel upon the below listed facts, and the annexed documents and exhibits referred to herein, hereby moves that:

The National Labor Relations Board, herein called the Board, issue an Order prior to and without the necessity of a hearing, containing findings of fact and conclusions of law in accordance with the allegations of the Complaint in the above entitled case, and ordering Northshore Fabricators and Erectors, Inc., herein called the Respondent, to appropriately remedy the unfair labor practices found; and such other further and different relief be granted as may be proper in the premises.

In support of said Motion Counsel for the General Counsel shows and alleges that:

1. On September 26, 1975, Local 819, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Petitioner, filed a petition in Case No. 29-RC-3182 to represent the production and maintenance employees employed by the Respondent. (A copy of the petition is annexed hereto as Exhibit A).

2. On June 15, 1976, the Regional Director for Region 29, herein called the Regional Director, issued a Decision and Direction of Election. (A copy of said Decision is annexed hereto as Exhibit B).

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3. On August 19, 1976, a request for review of the Regional Director's Decision and Direction of Election by Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, herein called the Intervenor, was denied by the Board. (A copy of such denial is annexed hereto as Exhibit C).

4. On June 30, 1976, a secret ballot election was conducted under the supervision of the Regional Director in which the ballots were impounded. (A copy of the Tally of Ballots is annexed hereto as Exhibit D).

5. On June 30, 1976, Respondent, the Intervenor, the Petitioner and the Board agent challenged the votes of various voters. (A copy of the list of challenged voters is annexed hereto as Exhibit E).

6. On July 6, 1976, the Petitioner filed objections to the election conducted herein. (A copy of the objections is annexed hereto as Exhibit F).

7. On July 7, 1976, Respondent filed objections to the election conducted herein. (A copy of the objections is annexed hereto as Exhibit G).

8. On September 1, 1976, the Regional Director issued a Supplemental Decision on Objections and Challenged Ballots overruling all of the objections to the election filed by the Respondent and the Petitioner, and ordering that the ballots of certain voters be opened and counted and that a Revised Tally of Ballots be issued. (A copy of said Supplemental Decision on Objections and Challenged Ballots is annexed hereto as Exhibit H).

9. On November 17, 1976, the request for review of the Regional Director's Supplemental Decision on Objections and Challenged Ballots was denied by the Board. (A copy of said denial is annexed hereto as Exhibit I).

10. On November 23, 1976, the Regional Director issued a Revised Tally of Ballots indicating that of the 23 eligible voters, 16 voted. (A copy of the Revised Tally of Ballots is annexed hereto as Exhibit J).

11. On November 23, 1976, the Regional Director issued a Second Revised Tally of Ballots which showed that a majority of the employees in the unit described in the Decision and Direction of Election selected the Intervenor as their representative for collective-bargaining. (A copy of the Second Revised Tally of Ballots is annexed hereto as Exhibit K).

12. On December 7, 1976, the Board issued a Certification of Representative certifying the Intervenor as the collective-bargaining representative for the unit of employees described in the Decision and Direction of Election. (A copy of the Certification of Representative is annexed hereto as Exhibit L).

13. On November 29, 1976, the Intervenor sent a letter to Respondent requesting that Respondent commence negotiations. (A copy of the letter is annexed hereto as Exhibit M).

14. On January 4, 1977, the Intervenor filed a charge in Case No. 29-CA-5396 alleging that Respondent has violated Sections 8(a)(1) and (5) of the Act. (Annexed hereto as Exhibit N is a copy of the charge).

15. On January 25, 1977, a Complaint and Notice of Hearing was issued in the above-entitled matter scheduling a hearing for April 12, 1977. (Annexed hereto as Exhibit O is a copy of the Complaint and Notice of Hearing).

16. On February 1, 1977, Respondent filed its Answer to the above Complaint and Notice of Hearing. (Annexed hereto as Exhibit P is a copy of the Answer).

17. On February 17, 1977, Counsel for the Respondent submitted a letter of position. (A copy of said letter is annexed hereto as Exhibit Q).

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18. Based on the above exhibits it is submitted that the Motion for Summary Judgment should be granted. Counsel for Respondent indicated in his position letter (Exhibit Q) that Respondent does not dispute that the Intervenor has made a valid request for bargaining or that Respondent has failed and refused, and will continue to fail and refuse, to bargain with the Intervenor. Counsel for the Respondent further stated that Respondent's refusal to bargain with the Intervenor is based upon its belief that the certification of the Intervenor was improper and that it wishes to test that certification in the courts. Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist which would require the Board to re-examine its decision in the representation proceeding. Respondent has, therefore, not raised any issue which is properly litigable in an unfair labor practice proceeding and is merely seeking to relitigate issues in the representation case already decided by the Board. Accordingly the Motion For Summary Judgment submitted should be granted.^{1/}

19. As an appropriate remedy for the refusal to bargain herein, it is submitted that in order to accord the employees the services of their selected bargaining representative for a period provided by law, that the initial year of certification should be construed as beginning on the date Respondent commences to bargain in good faith with Union. See Mar-Jac Poultry Co., 136 NLRB 785; Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229, enfd. 328 F. 2d 600 (C.A. 5), cert. denied 379 U.S. 817; Burnett Construction Co., 149 NLRB 1419, 1421, enfd. 356 F. 2d 51 (C.A. 10).

^{1/} Medical Ancillary Services, Inc., 195 NLRB 290 (1972); P & B Packers, Inc., 195 NLRB 318 (1972).

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WHEREFORE the undersigned Counsel for the General Counsel respectfully petitions that the relief prayed for in the Motion be granted.

Dated at Brooklyn, New York this 17th day of February, 1977.

Respectfully submitted,

Alvin Blyer

Alvin Blyer
Counsel for the General Counsel
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARDForm Approved
Budget Bureau No. 64-R00214

PETITION

DO NOT WRITE IN THIS SPACE

CASE NO.

29-RC-3182

DATE FILED

9/26/75

INSTRUCTIONS—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more than one item is required for any one item, attach additional sheets, numbering them accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition (If box RC, RM, or RD is checked and a charge under Section 8(h)(1) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)

(Check one)

- ☒ RC—CERTIFICATION OF REPRESENTATIVE—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM—REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ RD—DECERTIFICATION—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD—WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC—UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees. (Check one) ☐ In unit not previously certified ☐ In unit previously certified in Case No. _____
- ☐ AC—AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. _____

Attach statement describing the specific amendment sought

2. NAME OF EMPLOYER

EMPLOYER REPRESENTATIVE TO CONTACT

PHONE NO.

515

588-0229

NORTHSHORE FABRICATORS & Erectors Inc.

Richard Panning

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, State, and ZIP Code)

2516 Chestnut St., Ronkonkoma, N.Y. 11779

4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)

Factory

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

Iron Fabrication

5. Unit Involved (In LC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)

Included

All production and maintenance workers employed by the Employer.

Excluded

All office clericals, supervisors, watchmen and guards as defined in the Act.

6a. NUMBER OF EMPLOYEES IN UNIT

PRESENT 12

PROPOSED (BY UC/AC)

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?

☒ YES ☐ NO

*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item "a" or "b" whichever is applicable)

7a. ☐ Request for recognition as Bargaining Representative was made on _____ and Employer

declined recognition on or about _____ (If no reply received, so state)

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act

8. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME

AFFILIATION

ADDRESS

DATE OF RECOGNITION OR CERTIFICATION

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year)

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year)

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED?

YES ☒ NO ☐

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

approximately 4

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF Local 455 Iron Workers A LABOR

ORGANIZATION OF 853 Broadway, New York, N.Y.

SINCE unknown

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c) WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE (IF NONE, SO STATE)

NAME

AFFILIATION

ADDRESS

DATE OF CLAIM (Required only if Petition is filed by Employer)

Local 455 Iron Workers

AFL-CIO

853 Broadway, N.Y., N.Y.

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Local 819, I.B.T. Chauffeurs, Warehousemen and Helpers of America

By Walter H. Hester Business AgentAddress 200 Park Avenue South, New York, N.Y. 10003

AL-7624

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

Exhibit A

94

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

NORTH SHORE FABRICATORS
AND ERECTORS, INC.,

^{1/}
Employer

and

CASE NO. 29-RC-3182

LOCAL 819, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Paulette T. Slavinskis, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.^{2/}
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organizations involved claim to represent certain employees of the Employer.^{3/}
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Employer is engaged in the shop fabrication and job site erection of steel and ornamental metal products, with its shop located in Ronkonkoma, New York. The Petitioner seeks to represent a unit of production

^{1/} The names of the parties appear as stated at the hearing.

^{2/} As noted below, the Hearing Officer foreclosed testimony concerning a multi-employer unit, this ruling comported with Board precedent and is affirmed.

^{3/} Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, intervened on the basis of a contractual interest.

EXHIBIT B

and maintenance employees, excluding erectors, at the Employer's ironworking shop. The Intervenor contends that the Employer is a member of a multi-employer unit represented by the Independent Association of Steel Fabricators, Inc., with which the Intervenor maintains a collective-bargaining relationship as the exclusive bargaining representative of the employer's ironworking employees.

The Employer contends that it is not a member of the multi-employer unit but otherwise takes no position concerning the competing unions. The parties stipulated that the erectors, employees of the Employer who are represented by a labor organization which is not a party to this proceeding, are properly excluded from the unit sought by the Petitioner.

At the hearing, the Intervenor made an offer of proof concerning the appropriateness of the asserted multi-employer unit. The Hearing Officer rejected this offer.

In Case No. 29-CA-4619, the Intervenor filed an unfair labor practice charge alleging, inter alia, that the Employer had violated Section 8(a)(5) and (1) of the Act, by refusing to bargain with the Intervenor in the multi-employer unit. The Regional Director refused to issue a Complaint in Case No. 29-CA-4619 by letter of December 23, 1975, finding in material past;

...[The Intervenor] was party to a collective bargaining agreement with the Employer covering the Employer's production and maintenance employees which expired on June 30, 1975; that between about June 16, 1975 to about September 11, 1975 [the Intervenor] bargained collectively with...[the representative of the multi-employer unit]... including the Employer herein, concerning the terms of a renewal collective bargaining agreement; that on or about September 11, 1975 the Employer herein resigned from the [multi-employer unit] and thereafter requested that [the Intervenor] bargain with it on an individual employer basis, and that on or about September 17, 1975 [the Intervenor] agreed in writing to resume bargaining with the Employer herein on an individual employer basis. However, thereafter [the Intervenor] never requested that the Employer meet with [it] to bargain collectively....

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The Intervenor appealed to the General Counsel of the Board to review the decision of the Regional Director, above. The General Counsel by letter of February 24, 1976 denied the appeal substantially for the reasons set forth by the Regional Director

It is now well settled that the Board will not allow the relitigation in representation cases of issues resolved by the General Counsel in prior unfair labor practice proceedings.^{4/} The question of the timeliness and propriety of the withdrawal of the Employer from the multi-employer unit has been resolved in Case No. 29-CA-4619 contrary to the Intervenor.^{5/} In effect the Intervenor is seeking here to reverse the General Counsel's determination.

The single-employer unit of the Employer's production and maintenance employees which the Petitioner here seeks to represent is a presumptively appropriate unit.^{6/} Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining:

All production and maintenance employees employed by North Shore Fabricators and Erectors, Inc., at its 2616 Chestnut Street, Ronkonkoma, New York, location, excluding all erectors, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the

+

4/ Service Employees International Union, Local 227 (Children's Rehabilitation Center, Inc., 211 NLRB No. 120, slip op. at 2; Times Square Stores Corp., 79 NLRB 361, 365-66 (1948), cited approvingly, Advance Industrial Security, Inc., 217 NLRB No. 1, slip op. at 4.

5/ In its brief, the Intervenor argues that it has been denied a hearing to which it is entitled. That argument and the cases cited in its support are inapposite because the position of the Intervenor has been fully heard in the prior unfair labor practice proceedings. See, n.4., supra.

6/ Marks Oxygen Co. of Alabama, 147 NLRB 228, 230 (1964).

date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Local 819, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; by Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO; or by neither.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 16 Court Street, Brooklyn, New York 11241 on or before June 22, 1976. No extension of time to file

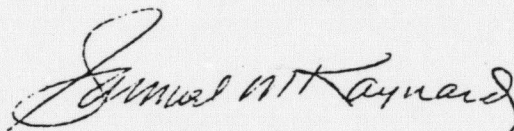
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this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, D. C. 20570. This request must be received by the Board in Washington by June 28, 1976.

Dated at Brooklyn, New York this 15th day of June, 1976.



Samuel M. Kaynard
Regional Director, Region 29
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

B

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TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION INFO	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

TELETYPE

NLRB
REGION 29
BROOKLYN, N. Y.

RE: NORTH SHORE FABRICATORS AND ERECTORS, INC. 29-RC-3182

INTERVENOR'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION IS HEREBY DENIED
AS IT RAISES NO SUBSTANTIAL ISSUES WARRANTING REVIEW. BY
DIRECTION OF THE BOARD: (MEMBER WALTHER DISSENTING)

MARIO LAURO, JR.
ASST. EX. SEC.
NLRB
WASHINGTON, D. C.

8/19/76
11:04 a.m.
FH:DB

Exhibit C

SECURITY CLASSIFICATION

PAGE NO. NO. OF PGS.

100

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

NORTHSHORE FABRICATORS & ERECTORS INC.

Employer

and

LOCAL 819, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

Petitioner

and

SHOPIEN'S LOCAL UNION 455, INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRONWORKERS, AFL-CIO

Intervenor

Case No. 29-RC-3182

Date Filed
9/26/75

Date issued 6/30/76

Type of Election:
(Check one:)

- ☐ Stipulation
☐ Board Direction
☐ Consent Agreement
☒ RD Direction

(If applicable
check either
or both:)

- ☐ 8(b) (7)
☐ Mail Ballot

Incumbent Union (Code)

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters _____
2. Void ballots _____
3. Votes cast for Local 819, I.B.T. _____
4. ~~Votes cast for~~ _____
5. Votes cast for Local 455, Ironworkers, AFL-CIO _____
6. Votes cast against participating labor organization(s) _____
7. Valid votes counted (sum of 3, 4, 5, and 6) _____
8. Challenged ballots _____
9. Valid votes counted plus challenged ballots (sum of 7 and 8) _____
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (item 9) has (not) been cast for:

BALLOTS IMPOUNDED

For the Regional Director

Paullette P. Stevenson

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For NORTHSHORE FABRICATORS &
ERECTORS INC.

For LOCAL 819, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

For SHOPIEN'S LOCAL UNION 455, INTER-
NATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL
IRONWORKERS, AFL-CIO

For *Keith P. Munroe*

Print D

29-RC-55
(2-66)

NATIONAL LABOR RELATIONS BOARD
REGION 29

CASE NAME: North Shore

CASE NO. 29-RC-3182

BOARD AGENT: J. Severino

DATE OF ELECTION: 6/20/76

NAME OF CHALLENGED VOTER	DEPARTMENT & NUMBER	CLASSIFICATION	CHALLENGER	REASON
Richard Bowley		E		NOL
Charles Swanson		E		NOL
William Wilkin		E		NOL
Andrew Nalotto		E		NOL
George Starn		E		NOL
William Fuy		E		NOL
John Kelly		E		NOL
Harold Wilson		E		NOL
Harri Threl		E		NOL
Allen Voss		E		NOL
Joseph Walek		E		NOL
Robert Graham		B.A. ^{Chalk}		NOL
Jack Johnson		BA ^{5th}		NOL
William Alessio		455		Not employee
Richard Lapping		BA ^{5th}		NOL
Thomas Loring		BA ^{5th}		NOL

Abbreviations

NOL - Not on list

LP - Supervisor

Exhibit E

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Robert Jay Lernerstein
ATTORNEY AT LAW

Seventy-One South Central Avenue
Valley Stream, New York 11580

(516) 561-2261

July 1, 1976

National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York

Re: North Shore Fabricators and Erectors, Inc.
Case No. 29-RC-3182

Gentlemen:

Objection is hereby made to the conduct of the election of June 30, 1976 for the following reasons:

- (1) Employer did not supply the required list of eligible employees in that close to fifty percent (50%) of the eligible voters were omitted.
- (2) List of eligible voters were not given to Petitioner sufficiently in advance of election.
- (3) Employer did not post the notice of election as required.
- (4) Employer campaigned against the Petitioner up to and including the time when the election was being conducted.
- (5) Employer threatened its employees with the closing of his business if any union won the election.
- (6) Campaign literature contained untrue statements.
- (7) Campaign literature contained misleading statements and were made at a time when the Petitioner did not have sufficient time to rebut or correct the same.
- (8) Election was conducted at a location where each voter had full view of an anti-union sign erected by the Employer.

Exhibit F

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Robert Jay Dinerstein

National Labor Relations Board
Region 29
Page 2

(9) Board permitted ballots to be cast at a place other than that designated in its own order.

(10) Ballots were cast in the open air so that the balloting was done in full view of each voter, observers and many other union officials who should not have been able to make these observations thereby destroying the secrecy of the ballot.

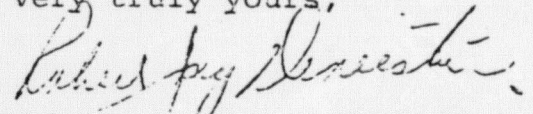
(11) Board failed to schedule the election at a location which would ensure the voter knowledge of their security in a situation which has been punctuated with violence.

(12) The normal election process was not adhered to when unilateral applications were made to Washington without notice to all parties and without all parties being given an opportunity to be heard.

(13) The Region did not conform to its previous and/or usual rules and regulations in the conduct of the election.

(14) The Region did not give sufficient and timely notice of the election.

Very truly yours,



Robert Jay Dinerstein

RJD:pag

cc: Gutterman & Pollack, Esqs.
North Shore Fabricators & Erectors, Inc.
Local 455
Sipser, Weinstock, Harper & Dorn, Esqs.
Local 819

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**Guterman
& Pollack**
ATTORNEYS AT LAW

Lester Guterman (1968)
Sanford E. Pollack

OF COUNSEL:

Gerald J. Gardner
Leonard Kreinces
Mannie Sipress

Seventy-one
So Central Avenue
Valley Stream, N. Y. 11580
(516) 561-0430

July 6, 1976

National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York

Re: Case No. 29-RC-3182

Gentlemen:

This office, which represents the Employer, North Shore Fabricators & Erectors, Inc. has not been served with a list of those persons challenged nor has the Employer received such list. Nevertheless, in keeping with the telegraphic direction of the Region, does herewith continue its challenge of all striking employees based upon the facts that:

- (1) Strikers who obtained permanent jobs elsewhere were presented for balloting.
- (2) The application of Board's published rules and regulations would have excluded each and every striker under the decision and direction of election herein.
- (3) No list, including the names of those challenged was supplied in accordance with "Excelsior" to the Employer nor by the Employer.
- (4) The strikers were terminated.
- (5) The strikers were permanently replaced.
- (6) Those ballots challenged by the Employer did not represent ballots cast by Employees in the unit.

EXHIBIT

105

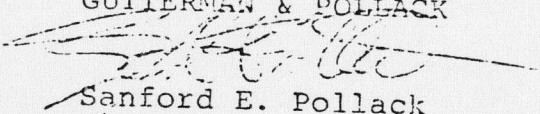
Guttermann
& Pollack

National Labor Relations Board
Region 29
July 6, 1976
Page 2

As an objection to the conduct of the election, the Employer contends that it did not have sufficient time to campaign amongst the strikers from the announcement by the Region of their eligibility.

Very truly yours,

GUTTERMAN & POLLACK


Sanford E. Pollack

SEP:pag

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TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION INFO	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

TELETYPE

REGION 29
NLRB
BROOKLYN, N. Y.

RE: NORTSHORE FABRICATORS AND ERECTORS, INC. 29-RC-3182

PETITIONER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S ~~XXXXXXXXXX~~
SUPPLEMENTAL DECISION ON OBJECTIONS AND CHALLENGED BALLOTS
IS HEREBY DENIED AS IT RAISES NO SUBSTANTIAL ISSUES WARRANTING
REVIEW BY DIRECTION OF THE BOARD.

MARIO LAURO, JR.
ASST. EX. SEC.
NLRB
WASHINGTON, D. C.

11/17/76
1:00 p.m.
SG:DB

Exhibit I

SECURITY CLASSIFICATION	
PAGE NO.	NO. OF PGS.

FORM NLRB-501
(2-67)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

Form Approved
Budget Bureau No. 64-R001.12

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CA 5396

Date Filed 1-4-77

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
North Shore Fabricators & Erectors, Inc.

b. Number of Workers Employed
Approx. 10

c. Address of Establishment (Street and number, city, State, and ZIP code)
Chestnut Street
Ronkonkoma, N.Y. 11779

d. Employer Representative to Contact

e. Phone No.

f. Type of Establishment (Factory, mine, wholesaler, etc.)
Factory

g. Identify Principal Product or Service
Metal Fabricators

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Shopmen's Local Union No. 455 is the certified collective bargaining representative of the production and maintenance employees of North Shore Fabricators & Erectors, Inc. Since in or about December of 1976 the Employer has refused to meet or bargain with said Union.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)
Shopmen's Local Union No. 455 International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO

4a. Address (Street and number, city, State, and ZIP code)
853 Broadway, New York, N.Y. 10003

4b. Telephone No.
GR. 5-2226

5. Full Name of National or International Labor Organization of Which It is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Belle Harper
(Signature of representative or person filing charge)

Attorney
(Title, if any)

SIPSER, WEINSTOCK, HARPER, DORN & LEIBOWITZ

Address: 380 Madison Avenue
New York, N.Y. 10017

867-2100
(Telephone number)

January 3, 1977
(Date)

FULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

108

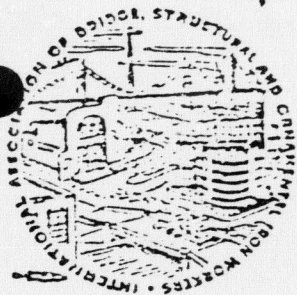
Shopmen's Local Union No. 455

OF THE

International Association of Bridge, Structural and
Ornamental Iron Workers

Office: 853 BROADWAY, NEW YORK, N. Y. 10003

GRamercy 5-2226 - 2227



WILLIAM COLAVITO
PRESIDENT

JOHN ZITO
FINANCIAL SECRETARY-TREASURER

AFFILIATED WITH
AFL - CIO
CENTRAL TRADES BUILDING CONSTRUCTION COUNCIL
OF GREATER NEW YORK
NEW YORK STATE FEDERATION OF LABOR
DISTRICT COUNCIL OF IRON WORKERS

November 29, 1976

North Shore Fabricators & Erectors
Chestnut Avenue
Ronkonkoma, N.Y. 11779

Gentlemen:

As you are aware, in an election held by the
National Labor Relations Board, Shopmen's Local Union
#455 was designated as the collective bargaining repre-
sentative of your production and maintenance employees.

We accordingly request a meeting with you for
the purpose of negotiating an agreement covering these
employees.

We would appreciate hearing from you within
the next few days relative to setting up a mutually
convenient date and place to meet. Please contact the
undersigned.

Very truly yours,

John Zito

EXHIBIT 1A

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**Guterman
& Pollack**

ATTORNEYS AT LAW

Lester Guterman (1962)

Sanford E. Pollack

OF COUNSEL:

Gerald J. Gardner

Leonard Kreinices

Mannie Sipress

Seventy-one

So. Central Avenue

Valley Stream, N.Y. 11580

(516) 561-0430

February 16, 1977

National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York

ATTENTION: MR. ABE BLYER

Re: North Shore

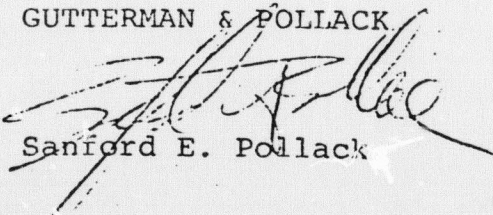
Dear Mr. Blyer:

In accordance with our telephone conversation and limited solely for use on a motion for summary judgment, this office in behalf of the respondent would not for those limited purposes contest the allegations that the charging party, Local 455, has in fact made a request for bargaining and, further, that the respondent, North Shore, has refused to honor such request.

As you know, it is the contention of this office that the certification was improper and that therefore the respondent will not bargain with Local 455 until such time as the certification has been examined by the Courts through the enforcement procedure. It is for that reason that a motion for summary judgment is acceptable provided that the admissions contained in this letter are limited for that purpose and further that the respondent reserves its right to contest the underlying certification.

Very truly yours,

GUTTERMAN & POLLACK


Sanford E. Pollack

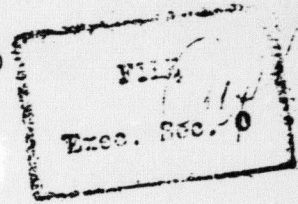
SEP:Pag

CC: North Shore

Exhibit 2

110

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD



-----x
NORTHSHORE FABRICATORS' AND
ERECTORS, INC.

and

SHOPMEN'S LOCAL UNION 455,
INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL AND
COMMERCIAL IRONWORKERS, AFL-CIO
-----x

FILE IN
FORMAL FILE
S.M.A.D.

Case No. 29-CA-5396

CROSS-MOTION FOR
SUMMARY JUDGMENT

Please take notice that the undersigned Counsel for
NORTHSHORE FABRICATORS AND ERECTORS, INC. upon the below
listed facts and the annexed documents and exhibits referred
to herein hereby moves:

That the National Labor Relations Board herein called
the Board issue an order prior to and without the necessity
of a hearing dismissing the Complaint in the above captioned
matter in all respects; and for such other, further and
different relief as the Board may desire just and proper.

In support of the Motion, Counsel for the Respondent
shows and alleges that:

(1) The certification upon which the duty to bargain
is founded is in violation and in controvention of the
established rules of this Board and the laws as they pertain
to said certification in that:

///

(a) On January 24, 1976 at 5:46 p.m., the Regional Director confirmed an earlier oral direction that an election take place on June 30, 1976. (See Exhibit A annexed hereto).

(b) On June 24, 1976 at 3:27 p.m. Counsel for the Respondent advised the Regional Director by telegram that the Regional Director's previous direction of election and the date scheduled for said election was violative of the established rules and regulations set forth in Excelsior. A copy of said telegram is annexed hereto and marked Exhibit B.

(c) On the same day, Counsel for the Petitioner in Case No. 29-RC-3182 advised the Regional Director that the shortening of the usual ten (10) day Excelsior Rule prejudiced his ability to campaign amongst the voters and violated the spirit and intent of Excelsior. A copy of that telegram is annexed hereto and marked Exhibit C.

(d) On June 25, 1976 the Regional Director sent, by ordinary mail, a purported addition to the Excelsior List for the election which was to take place on June 30th. (See Exhibit D annexed hereto).

(e) Despite protestations, the Regional Director on June 28th at 4:59 p.m. caused a telegram to be sent re-confirming the direction of election. (See Exhibit E annexed hereto).

(f) The undersigned caused an appeal to be taken from the Regional Director's direction of election to this Board which appeal was denied on June 30, 1976 at 8:06 a.m. Members Penello and Walter dissented. (See Exhibit F annexed hereto).

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(g) During the pendency of the appeal to this Board, Counsel for the Petitioner in Case No. 29-RC-3182 caused a Motion for a Temporary Restraining Order and Preliminary Injunction to be served. Annexed to said Motion is an Affidavit of ROBERT JAY DINERSTEIN sworn to the 28th day of June, 1976 and for the purposes of this Motion said Affidavit is adopted by reference. (See Exhibit G annexed hereto). This Motion ultimately was dismissed by JUDGE DOOLING because of the Board's representation that the ballots would be impounded.

(h) As had been ordered, the election proceeded on June 30, 1976 and on July 6, 1976, your deponent filed timely objection to said election among other things based upon the fact that:

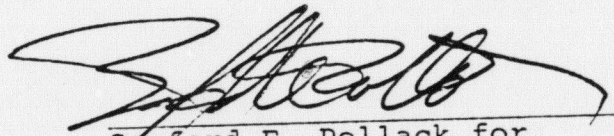
"The application of the Board's published rules and regulations would have excluded each and every striker . . . No list, including the names of those challenged was supplied in accordance with Excelsior to the Employer nor by the Employer . . . Those ballots challenged by the Employer did not represent ballots cast by the employees in the unit . . . As an objection to the conduct of the election, the Employer contends that it did not have sufficient time to campaign amongst the strikers from the announcement by the Region of their eligibility".

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(i) The Board improperly dismissed said appeal and thereafter the Regional Director improperly certified the results of said election without giving effect to the Excelsior requirements.

WHEREFORE, the undersigned Counsel for the Respondent respectfully petitions that the relief prayed in this Motion be granted.

Dated at Valley Stream, New York this 14th day of March, 1977.



Sanford E. Pollack for
CUTTERMAN & POLLACK
Attorneys for Respondent
NORTHSHORE FABRICATORS &
ERECTORS, INC.
71 South Central Avenue
Valley Stream, New York 11580

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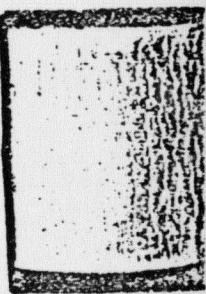
QJA031 945A NL BJ BROOKLYN NY 6-24 546P EST
PMS GUTTERMAN & POLLACK ATTN SANFORD POLLACK ESQ
71 SOUTH CENTRAL AVE VALLEY STREAM NY 11580
RE NORTH SHORE FABRICATORS AND ERECTORS INC
CASE NO. 29-RC-3182

GENTLEMEN:

THIS IS TO CONFIRM NOTIFICATION THAT THE ELECTION HEREIN IS
SCHEDULED FOR JUNE 30, 1976, FROM 9:00AM TO 12:00 NOON IN A BUS
TO BE PARKED IN FRONT OF THE EMPLOYERS PREMISES AND THAT THE
BALLOTS WILL BE IMPOUNDED

SAMUEL M KAYNARD
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
16 COURT ST BROOKLYN NY 11241

EXHIBIT A



MGMNYAT HSB
2-042941E176002 06/24/76
ICS IPMMTZZ CSP
1 5165610430 MGM TDMT VALLEY STREAM NY 06-24 0327P EST

115
western union Mailgram®



GUTTERMAN AND POLLACK P GRANDE
71 SOUTH CENTRAL AVE
VALLEY STREAM NY 11580

with file

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

5165610430 TDMT VALLEY STREAM NY 98 06-24 0327P EST
PMS SAMUEL KAYNARD, REGIONAL DIRECTOR, DLR
NATIONAL LABOR RELATIONS BOARD REGION 29 16 COURT ST
BROOKLYN NY 11241
REFERENCE NORTH SHORE FABRICATORS CASE 29-RC-3182 OBJECTION IS
HEREBY MADE TO THE CONDUCTING OF AN ELECTION ON JUNE 30 THE
FOREGOING VIOLATES THE DIRECTION OF ELECTION HERETOFORE HAD AS WELL
AS PLACES THE EMPLOYER IN A POSITION OF HAVING TOTALLY OBJECTIONABLE
ELECTION SINCE THE EXCELSIOR LIST WAS PREDICATED UPON THE
REQUIREMENT THAT THE PARTIES BE AFFORDED 10 DAYS ADVANCE NOTICE OF
THE ELIGIBLE EMPLOYEES WHICH WOULD HAVE OF NECESSITY MADE THE
EXCLUSION OF CERTAIN FORMER EMPLOYEES PROPER UNDER THESE
CIRCUMSTANCES THE LIST IS IMPROPER AND NO ELECTION SHOULD BE HAD
BASED ON SUCH A LIST
GUTTERMAN AND POLLACK ATTORNEYS FOR NORTH SHORE CC: SHOPMENS
LOCAL 455

16:29 EST

MGMCOMP MGM

EXHIBIT B

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

5163688922 MGM TL , COMMACK NY 249 06-24 034 : EST

21P

J TRUESDALE EXECUTIVE SECRETARY

NATIONAL LABOR RELATIONS BOARD

WASHINGTON DC 20570

NORTHSHORE WITH LOCAL 819 WITH LOCAL 455 CASE NUMBER 29-CA-4917

DEAR SIR:

I HAVE JUST BEEN ADVISED THAT MY OFFICE HAS JUST BEEN NOTIFIED BY TELEPHONE THAT THE ELECTION IN THE CAPTIONED MATTER HAS NOW BEEN SCHEDULED FOR JUNE 30 1976. WHAT WAS PURPORTED TO BE AN EXCELSIOR LIST WAS ALLEGEDLY CALLED IN AT THE SAME TIME. NO WRITTEN NOTICE OF SUCH EXCELSIOR LIST HAS BEEN RECEIVED TO DATE.

IT IS WELL ESTABLISHED THAT A LABOR ORGANIZATION IS ENTITLED TO AN EXCELSIOR LIST NOT LESS THAN TEN DAYS PRIOR TO THE SCHEDULED DATE OF THE ELECTION. WHETHER IT BE THE BOARD OR THE REGION, IN THIS INSTANCE MY CLIENT HAS BEEN DEPRIVED OF ITS ESTABLISHED RIGHT TO SUCH LIST FOR SAID TEN DAY PERIOD AND IN FACT BECAUSE OF THE LATENESS OF THE HOUR, 4:40 PM, AS A PRACTICAL MATTER SAME WILL NOT BE OF ANY VALUE UNTIL JUNE 25.

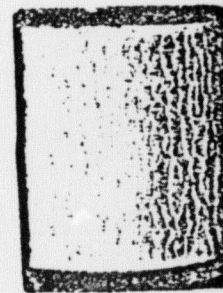
THE PURPOSE OF PROVIDING SUCH A LIST IS TO ALLOW THE LABOR ORGANIZATION TO CONDUCT AN ORGANIZING CAMPAIGN THAT WOULD BE MEANINGFUL. IT IS RESPECTFULLY SUBMITTED THAT NO SUCH CAMPAIGN CAN BE EFFECTIVELY BEGUN WITH SUCH LITTLE TIME TO WORK BEFORE THE ELECTION.

I SUBMIT THAT THE PROCEDURE BEING FOLLOWED IS IMPROPER AND PREJUDICIAL TO MY CLIENT AND THAT IF THE BOARD PERMITS THIS ELECTION TO GO FORWARD SUCH ELECTION WILL BE VACATED

ROBERT JAY DINERSTEIN
ATTORNEY FOR LOCAL 819
26 COURT ST
BROOKLYN NY 11242
16:41 EST

MGM CONP MGM

EXHIBIT C





117
NATIONAL LABOR RELATIONS BOARD

REGION 29

16 Court Street

Brooklyn, New York 11201

Telephone 595-3535

June 25, 1976

Local 455, Ironworkers
853 Broadway
New York, N.Y.

Local 819, IBT
200 Park Avenue South
New York, N.Y. 10003

Re: Northshore Fabricators & Erectors Inc.
Case No. 29-RC-3182

Gentlemen:

Enclosed herein is a list of striking employees who were not included on the Excelsior list previously submitted by the Employer.

Very truly yours,

Paulette T. Slavinkas
Board Agent

cc: Sipser, Weinstock, Harper & Dorn
380 Madison Ave.
New York, N.Y. 10017

Robert J. Dinerstein, Esq.
26 Court St.
Brooklyn, N.Y. 11242

EXHIBIT D

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003321 BROOKLYN NY 06-28 459P

GUTTERMAN AND POLLACK ATTN SANFRD POLLACK REPT DELIVERY DLR
71 SOUTH CENTRAL AVE VALLEY STREAM NY

RE: NORTH SHORE FABRICATORS AND ERECORDS INC

CASE NBR 29-RC-3182

AS YOU WERE PREVIOUSLY ADVISED, THE ELECTION SECHEDULED HEREIN
WILL BE HELD ON A BUS PARKED OUTSIDE T
EXBEMPLOYERS PREMISES

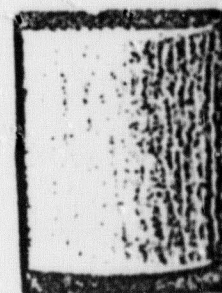
THE EMPLOYERS ADDRESS IS 2416 CHESTNUT AVE RONKONKOMA NY

SAMUEL M KAYNARD EREGIONAL DIR

NATL LABOR RELATIONS BOARD REGION 29

16 COURT ST BRLYN NY 11241

EXHIBIT E



JL57134 EVDAE

119

11

GS:ETRC

JUN 30 8 05 AM 1976

94306 R 0-21-01-026037
RAAUIJHZ RUEVDEL0019 1812035-UUUU--RUEVDAE.
NLRB

FM MARIO LAURO JR ASST EXEC SECY NLRB WSH DC
TO RUEVDAE/4/SANFORD POLLACK ESQ GUTTERMAN AND POLLACK
71 SOUTH CENTRAL AVE VALLEY STREAM NY 11580 516 561 0430.

BT

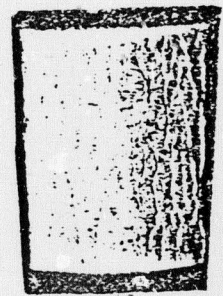
RE NORTH SHORE FABRICATORS AND ERECTORS INC 29 RC 3182
REQUESTS BY EMPLOYER AND PETITIONER TO STAY ELECTION SCHEDULED
FOR JUNE 30, 1976, FOR REASONS STATED ARE HEREBY DENIED BY
BY DIRECTION OF THE BOARD: (MEMBERS PENELLO AND WALTER DISSENTING.)
BT

TO PAULA GRANDE 6/30/76 11
F.H.

NNNN

JL57134 EVDAE

EXHIBIT F



120

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

76C 1221

-----X
Local 819, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN and :
HELPERS OF AMERICA,

Civil Action No.

Plaintiff

MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

- v -

SAMUEL M. KAYNARD as
Regional Director, Region
29 of National Labor
Relations Board

DOOLING, J.

Defendant.
-----X

Upon the Complaint herein and upon the attached
affidavit of Robert Jay Dinerstein, plaintiff by its attorney
Robert Jay Dinerstein, respectfully moves this Court for:

a) A Temporary Restraining Order restraining
defendant and his attorneys and agents from holding a
representation election or otherwise proceeding in a certain
matter identified as Case No. 29-PC-3182, North Shore
Fabricators and Erectors, Inc. currently pending before
defendant pending a determination of the motion for a
preliminary injunction on the grounds that immediate,
irreparable injury, loss and damage will result to plaintiff
in the interim; and

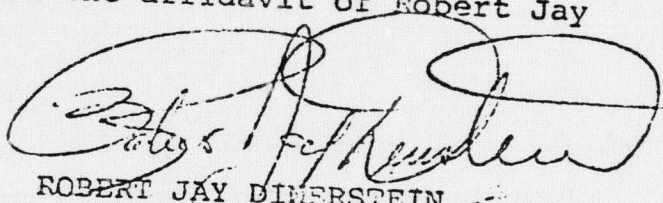
b) That pending the final hearing and
determination of this case, the Court issue a preliminary
injunction staying and enjoining defendant and his attorneys
and agents from holding a representation election or otherwise

EXHIBIT G

proceeding in said matter identified as case No. 29-RC-3182, North Shore Fabricators and Erectors Inc.

c) That a hearing be held at a motion term of this Court, to be held in Room , United States Court House, 225 Cadman Plaza East, Brooklyn, New York, on the day of June, 1976, at o'clock in the noon of that day why an order should not be made herein for the preliminary injunction sought.

Notice of this application and copies of the supporting papers upon which it is based were served upon defendant as set forth in the affidavit of Robert Jay Dinerstein.



ROBERT JAY DINERSTEIN

Attorney for Plaintiff
71 South Central Avenue
Valley Stream, New York 11580

TO: Samuel M. Kaynard
Regional Director, Region 29
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Local 618, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN
and HELPERS OF AMERICA,

Civil Action No.

Plaintiff

AFFIDAVIT

- v -

SAMUEL M. KAYNARD as
Regional Director, Region 29
of National Labor Relations
Board,

Defendant.

DOOLING, J.

STATE OF NEW YORK)
COUNTY OF NASSAU) ss:

ROBERT JAY DINERSTEIN being duly sworn deposes
and says:

I am attorney of record for the plaintiff in the captioned
matter and make this affirmation in support of the instant application to
this Court for a temporary Restraining Order and Preliminary Injunction
staying and enjoining the defendant herein and his agents and attorneys
from conducting an election in the matter of North Shore Fabricators and
Erectors Inc., which is a case currently pending before the defendant
and is identified by case No. 29-RC-3182.

On June 15, 1976 the defendant herein rendered a decision

and direction of election in the matter of North Shore Fabricators and Erectors Inc., employer, and Local 819, the plaintiff herein, as petitioner, identified as case No. 29-RC-3182. The defendant, in such decision directed that an election be held whereby those employees eligible to vote shall determine whether or not they desire to be represented for collective bargaining purposes by Local 819, by Local 455 (an intervenor) or by neither. Said decision further directed that within seven (7) days of the date of such decision and in any event by no later than June 22, 1976, an election eligibility list, commonly called an Excelsior list, containing the names and addresses of all the eligible voters shall be filed by the employer with the defendant who shall make the list available to all parties to the election.

On June 23, 1976 your deponent received a telephone call at approximately 4:30 p.m. from an agent of the defendant. Said agent inquired as to whether or not your deponent would be willing to accept a list of names and addresses of eligible employees which did not include the names and addresses of those employees who were on strike who were allegedly eligible to vote. Your deponent indicated that he could only accept the list, provided by the employer which contained the names and addresses of all employees eligible to vote. Said agent then indicated that the names and addresses of the striking

employees appeared in the transcript of the hearing which resulted in the June 15 decision of the defendant. Your deponent immediately advised defendant's agent that he had never ordered a copy of such transcript. Your deponent further advised the agent that to order such transcript would cause the plaintiff herein an unreasonable and unnecessary expense and that it was your deponent's belief that the plaintiff was entitled to receive such information from the employer.

On June 24, 1976 your deponent is advised that a telephone call was received by his office, in his absence, from said agent and that a message was left to return such call. Shortly thereafter your deponent is advised that said agent called the plaintiff directly and dictated to someone at the plaintiff's offices a list of names and addresses. Your deponent immediately upon learning of what had transpired communicated with both the defendant herein and the NLRB by Western Union protesting what had transpired and the further fact that apparently an election in this matter had been directed to be held on June 30, 1976.

On June 25, 1976 at or about 10 a.m. your deponent appeared at the defendant's offices to inquire as to what had transpired and to protest the manner in which defendant was proceeding. The defendant insisted that it had a right to proceed with the scheduled election on June 30 and refused to consider the fact that the entire

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- 4 -

procedure in this matter was contrary to established NLRB procedure and in fact violative of its own rules and regulations.

At or about 12:20 p.m. on June 26, 1976 the Board's agent presented your deponent with a document entitled "Notice of Election," Said document being the first written communication from the defendant that the election was in fact to be held on June 30, 1976. Shortly thereafter defendant's agent handed your deponent a list headed "Re: Northshore Fabricators and Erectors, Inc., 29-RC-3182, names of strikers on payroll as of June 9, 1976." Since this list was the only written communication received from the defendant setting forth names and addresses of allegedly eligible employees your deponent is forced to conclude that same was intended to satisfy the Excelsior list requirement. There was no indication on said list that such data was provided by the employer as required nor was there any explanation as to why such list did not contain the names and addresses of non-strikers on the employer's payroll on June 9, 1976.

In any and all events the fact of the matter is that even if the list handed to your deponent at or about 12:30 p.m., Friday, June 25, is deemed *sufficient* to satisfy the intent and purpose of the NLRB's rules and regulations, the plaintiffs herein would have only had a maximum of four and a half (4 1/2) days in which to solicit the votes and support of the employees eligible to vote.

It is unconscionable for the NLRB to restrict plaintiff's ability to communicate with the eligible employees *in* this matter. The Court's attention is respectfully directed to the fact that we are not talking about a difference of a day or two from that provided by the Board rule but rather the defendant, if allowed to proceed with this election, would be reducing plaintiff's allotted time by over fifty percent (50%) ~~of~~ that which is provided by the NLRB's own rules and regulations.

It is submitted that with a summer weekend comprising almost half of the time which would remain available to the plaintiff to communicate with the eligible employees, the defendant by proceeding in this manner has substantially precluded the plaintiff from communicating with the *employees* -

If the defendant is permitted to proceed with this election the plaintiff will suffer irreparable injury for while it is virtually certain that this election will be set aside by either the NLRB or the Courts, the procedure is at best a very lengthy one. The plaintiff also runs the risk of suffering irreparable harm to its image ^{if} because of its inability to communicate with the eligible employees due to the defendant's unjustified and irresponsible actions, it loses this election. As a practical matter, the plaintiff will bear the stigma of such losses and will suffer consequential damages as a result thereof even though

there is every reason to believe that the election, if permitted to be held, will be set aside and the plaintiff eventually vindicated.

The defendant's motives for proceeding in this manner must be questioned. Upon information and belief as of this date the employer has still failed to file the required list as evidenced by the fact that your deponent and the plaintiff have still not received same. It is respectfully submitted that traditionally neither the defendant nor the NLRB would proceed to an election under such circumstances. Yet, in the instant case not only have they apparently chosen to overlook the employer's failure to comply with the defendant's order, but the defendant himself has chosen to ignore the controlling rules and regulations.

It is further respectfully brought to the Court's attention that the intervenor, Local 455, whose name is also scheduled to appear on the ballot is opposed to the holding of said election on the grounds that they believe that in arriving at the decision of June 15 substantive questions of law and policy are raised because of a departure from officially reported Board precedent, and the conduct of the hearing and rulings made in connection with the proceeding have resulted in prejudicial error.

A copy of a letter dated June 25, 1976 from Local 455's counsel is appended hereto.

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- 7 -

In the final analysis it would appear that only the employer has no objection to the conduct of this election on June 30, 1976 and the reason should be quite evident. Having apparently failed to abide by the discussion of the defendant herein, the employer is now in the enviable position of proceeding to an election in which both Unions whose names appear on the ballot have been deprived of an adequate opportunity to communicate with the employees and the employer's chances for defeating both Unions is greatly enhanced.

Your deponent on this date personally served a copy of these moving papers upon the defendant herein and further advised said defendant of your deponent's intention of applying to this Court at this time for the Restraining Order sought herein.

no prior application has been made for the relief sought herein
WHEREFORE your deponent prays for an order of this Court staying and enjoining the defendant, his agents and employees from conducting an election in the matter of North Shore Fabricators and Erect Inc., identified as case No. 29-RC-3182 on June 30, 1976 and for such other further and different relief as to this Court may seem just and proper under the premises.

[Signature]

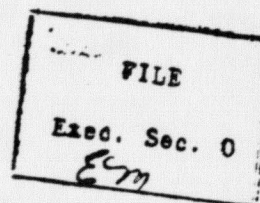
Sworn to before me this

29th day of June, 1976

[Signature]

FJM

D-2387
Ronkonkoma, N.Y.



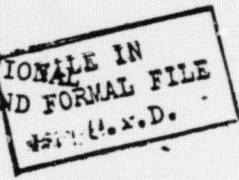
129

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NORTHSHORE FABRICATORS AND ERECTORS, INC.
and

SHOPMEN'S LOCAL UNION 455, INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL
IRONWORKERS, AFL-CIO

Case 29--CA--5396



DECISION AND ORDER

Upon a charge filed on January 4, 1977, by Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, herein called the Union, and duly served on Northshore Fabricators and Erectors, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint and notice of hearing on January 25, 1977, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on December 7, 1976, following a Board election in Case 29--RC--3182, the Union was duly certified as the exclusive collective-bargaining representative

of Respondent's employees in the unit found appropriate;^{1/} and that, commencing on or about November 29, 1976, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On February 1, 1977, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint and on February 17, 1977, Respondent submitted a letter of position.

On February 22, 1977, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on March 7, 1977, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. On March 17, 1976, Respondent filed its Cross-Motion for Summary Judgment.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motions for Summary Judgment

In its answer, letter of position, and Cross-Motion for Summary Judgment, Respondent contends in substance that the certification is invalid because the

^{1/} Official notice is taken of the record in the representation proceeding, Case 29--RC--3182, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (C.A. 4, 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (C.A. 5, 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va., 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA, as amended.

election was conducted less than 10 days after the receipt of the Excelsior list in contravention of the Board's Rules and Regulations. In his Motion for Summary Judgment, counsel for the General Counsel contends that Respondent has not raised any issue which is properly litigable in an unfair labor practice proceeding and is merely seeking to relitigate issues decided by the Board in the representation case, and, accordingly, that summary judgment should be granted. We agree.

Review of the record herein, including that in the underlying representation case (29--RC--3182), shows that Local 819, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein the Petitioner, filed a petition seeking to represent a production and maintenance unit of Respondent's employees. The Union intervened on the basis of its contract with a multiemployer bargaining unit, of which the Respondent allegedly was a member and asserted that a multiemployer unit was appropriate. After a hearing, the Regional Director issued his Decision and Direction of Election on June 15, 1976, in which he found that a unit limited to the Respondent's production and maintenance employees was appropriate.^{2/} By letter dated June 18, 1976, the Union requested that the Regional Director conduct the election on or before June 30, 1976, in order to avoid disenfranchising employees on strike against Respondent since July 1, 1975. The Excelsior list of eligible employees was received by the Regional Office and mailed on June 22, 1976, and, as that list did not include striking employees,

^{2/} In his Decision and Direction of Election the Regional Director also found that the timeliness and propriety of the Respondent's withdrawal from the multiemployer bargaining unit had been resolved contrary to the Respondent in a prior unfair labor practice proceeding (Case 29--CA--4619) and could not be litigated in the representation case. Thereafter the Board denied the Union's request for review of this finding.

a supplemental list of eligible strikers was subsequently mailed to the parties on June 24, 1976. The same day the Regional Director notified the parties that the election would be held on June 30 and Respondent, by telegrams to both the Regional Director and the Board, requested that the election be stayed.^{3/}

Respondent contended in substance that, by scheduling the election for June 30, the Board was improperly shortening its requirement that the Excelsior list be supplied 10 days in advance of the election. On June 28, the Regional Director reaffirmed the June 30 election date and, by telegraphic order of June 30, the Board denied the request to stay the election.

In the election held on June 30, 1976, all 16 ballots cast were challenged. Both the Petitioner and Respondent filed similar objections regarding the timing of the election. Specifically, Petitioner alleged that it did not receive either the list of eligible voters or the election notice sufficiently in advance of the election. Respondent's single objection alleged that it did not have sufficient time to campaign among the strikers after announcement of their eligibility shortly before the election.

After investigation, the Regional Director on September 1, 1976, issued his Supplemental Decision on Objections and Challenged Ballots in which he recommended overruling the objections in their entirety. With respect to the 16 challenges, he recommended that 8 be overruled, 5 sustained, and 3 remain unresolved. Accordingly, he ordered that the eight overruled challenged ballots be opened and counted and, if those eight ballots did not result in a

^{3/} Petitioner filed a similar request with the Board.

determinative election, that a hearing be held on the three unresolved challenges. Treating together the objections of Respondent and the Petitioner relating to the timing of the election, the Regional Director found that, although the 6-day period between the June 24 notification and the June 30 election was shorter than the usual 25-day period regularly utilized in setting election dates

Following directions of election, (1) the Board had in similar unusual circumstances sanctioned the shortening of time periods,^{4/} (2) the affected employees had numerous opportunities to question all parties, and (3) the burden of the shortened period fell equally on all parties.

Subsequently, Petitioner filed a request for review of the Regional Director's supplemental decision, contending, inter alia, that the overruling of its objection on the timing of the election was improper. On November 17, 1976, the Board denied Petitioner's request for review for lack of substantial issues warranting review. Respondent did not request review of the overruling of its similar objection.

On November 23, 1976, the eight overruled challenged ballots were opened and counted; the revised tally showed that all eight were cast for the Union and that, therefore, the remaining three unresolved challenged ballots were not sufficient to affect the results of the election. Accordingly, the Regional Director certified the Union on December 7, 1976. It thus appears that the Respondent is attempting to raise issues which had been raised or could have been raised in the underlying representation case.

^{4/} The Regional Director basically relied on Kingsport Press, Inc., 146 NLRB 260 (1964), to justify shortening the usual time requirement to avoid disenfranchising the strikers.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.^{5/}

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.^{6/} We shall, accordingly, deny Respondent's Cross-Motion and grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of the Respondent

Respondent is, and has been at all times material herein, a New York corporation with its principal office and place of business at 2612 Chestnut Street, Ronkonkoma, New York, herein called the Ronkonkoma plant, where it is engaged in the shop fabrication and jobsite erection of steel and ornamental

^{5/} See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

^{6/} In its answer to the complaint, Respondent denies the request and refusal to bargain. Respondent's uncontroverted letter of position, attached to the Motion for Summary Judgment as Exh. Q, states that, for the purposes of the Motion for Summary Judgment, Respondent would not contest the allegations of a request and refusal. As this letter in effect amends Respondent's answer, we accordingly deem those allegations of the complaint concerning a request and refusal to be admitted to be true.

metal products. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its Ronkonkoma plant iron, steel, and related products, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its Ronkonkoma plant in interstate commerce directly from States other than the State in which it is located and which were transported and delivered to it and received from other enterprises located in New York, each of which other enterprises had received the said goods and materials in interstate commerce directly from States other than the State in which it is located.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees of Respondent employed at its Ronkonkoma plant, exclusive of all erectors, office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

2. The certification

On June 30, 1976, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 29, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on December 7, 1976, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about November 29, 1976, and continuously since on or about December 10, 1976, through January 6, 1977, and all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about November 29, 1976, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since November 29, 1976, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (C.A. 10, 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Northshore Fabricators and Erectors, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All production and maintenance employees of Respondent employed at its Ronkonkoma plant, exclusive of all erectors, office clerical employees, guards and supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. Since December 7, 1976, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.
5. By refusing on or about November 29, 1976, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Northshore Fabricators and Erectors, Inc., Ronkonkoma, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Shopmen's Local Union 445, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees of Respondent employed at its Ronkonkoma plant, exclusive of all erectors, office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

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(b) Post at its Ronkonkoma, New York, plant copies of the attached notice marked "Appendix."^{7/} Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. June 21, 1977

John H. Fanning, Chairman

Howard Jenkins, Jr., Member

Betty Southard Murphy, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

^{7/} In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees of Respondent employed at its Ronkonkoma plant, exclusive of all erectors, office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

NORTHSHORE FABRICATORS AND ERECTORS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212--330--7709